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No. 11,511

IN THE  
**United States Circuit Court of Appeals**  
**For the Ninth Circuit**

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SAM RICHARD SHOCKLEY and MIRAN EDGAR THOMPSON,	} <i>Appellants,</i>
VS.	
UNITED STATES OF AMERICA,	
	} <i>Appellee.</i>

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**BRIEF FOR APPELLEE.**

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**JURISDICTIONAL STATEMENT.**

There are two separate appeals involved in the above entitled cause. Sam Richard Shockley on December 24, 1946, filed a notice of appeal to this Court from a judgment of the United States District Court for the Northern District of California entered on December 21, 1946, adjudging him to be guilty of the crime of murder in the first degree and sentencing him to suffer the death penalty. (T. 89-96.) Miran Edgar Thompson on December 30, 1946, filed a notice of appeal to this Court from a judgment of the United States District Court for the Northern District of California entered on December 21, 1946, adjudging him to be guilty of the crime of murder in the first



degree and sentencing him to suffer the death penalty. (T. 91) (T. 121-125.)

The Grand Jury for the Southern Division of the United States District Court for the Northern District of California on June 19, 1946, returned an indictment against the Appellants and Clarence Victor Carnes charging them with having on the 2nd day of May, 1946, at the United States Penitentiary at Alcatraz Island, California, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof and within this Division and District, murdered William A. Miller, who was at said time an employee of the United States Penitentiary at Alcatraz Island, California, and engaged in the performance of his official duties. (T. 2-3.) On July 23, 1946, the defendants named in the foregoing indictment appeared in Court with their counsel, James E. Burns, and entered a plea of not guilty to the indictment. (T. 42.)

The United States District Court for the Southern Division of the Northern District of California had jurisdiction to try the defendants for this offense because William A. Miller, an employee of a United States Penal Institution, while engaged in the performance of his official duties, was murdered by the defendants at Alcatraz Island, California, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof and within this Division and District, on May 2, 1946. (T. 18 USCA, Sec. 253; T. 28 USCA, Sec. 41, Sub. 2; T. 18 USCA, Sec. 451, Sub. 3.)



The defendant, Clarence Victor Carnes, was convicted of murder in the first degree, without capital punishment, and is not appealing from the judgment rendered upon said verdict.

The United States Circuit Court of Appeals for the Ninth Circuit has jurisdiction to review the judgments in question upon the appeals taken by the above named appellants. (T. 28 USCA, Sec. 225.)

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#### **STATEMENT OF THE CASE.**

On May 2, 1946, William A. Miller was senior officer or instructor, employed at the United States Penitentiary, Alcatraz Island, California. He was assigned at that time to duty on the ground floor of the main cell house. His duties kept him at the west end of the cell house most of the time. (T. 204-207.)

The main cell house is located in a building approximately 215 feet long, extending in an easterly and westerly direction. It contains three cell blocks. The first cell block "Block A" is on the northerly side of the main cell house and does not cover the entire length of the building. It is approximately 125 feet long. South of Cell Block A and parallel with it there is another cell block called "Cell Block B". This cell blocks extends the entire length of the main cell house and is 180 feet long. South of this cell block and parallel with it is another cell block "Cell Block C." This cell block extends the entire length of the main cell house. Each of the three cell blocks contains three

tiers, each tier being 8 feet in height. Between Cell Block B and Cell Block C there is an alleyway extending the entire length of the main cell building, approximately 14 feet in width and known as "Broadway." (T. 276-277.)

There is a southern wall of the main cell building which houses Cell Blocks A, B and C. It is a concrete wall extending from the floor to the ceiling, with the exception that in the corner of this wall there is a doorway leading into the prison library. On the south side of this concrete wall is located Cell Block D. There is a door passing through this concrete wall near its westerly end permitting entrance from the main cell house into Cell Block D (T. 277-278.) Cell Block D is known as the isolation section. It has cells on one side only, the northerly side. There are three tiers in the D Cell Block, each containing fourteen cells. The cells face towards the south side of the building. At the west end of the main cell house is a gun gallery extending across the entire west end of the cell house and D Cell Block. The lower level of this gun gallery is approximately 10 feet from the floor of the cell house and the floor of D Cell Block. There is no connection between the gun gallery and the floor of the main cell house and D Cell Block, except a post here and there for supporting purposes. The west gun gallery consists of two narrow walkways, one above the other, the first or lower being approximately ten feet from the floor of the cell house and the upper being approximately ten feet above the lower walkway. At the base of the walkway

is a steel sheet which varies from 39 to 41 inches in width. The west gun gallery in its entirety is approximately 125 feet long, of which ninety feet is in the main cell house area and 35 feet beyond the concrete wall and in the D Cell house area. The steel shield rises vertically from the floor of each walkway of the west gun gallery to form a protective shield about 39 inches above the flooring. Above the steel shield round bars rise vertically, the average distance between them being 5 to 5¼ inches. They rise and are supported by rectangular steel bars which furnish support and stability to them. The steel bars go from the lower level of the west gun gallery to the upper level of the west gun gallery, and when they approach a point approximately 7 feet from the floor of the west gun gallery, top level, they bend inward toward the west wall of the building in order to form a protective covering over the top of the gun gallery to prevent access into the gallery from above. Access to the west gun gallery is gained by a doorway from the outside of the prison buildings. It is near the southwest corner of the building. This door leads into a barred cage-like structure in which there is a ladder or steel stairway, giving access to the lower level of the west gun gallery from the main floor of the building. This is the only access to the lower gun gallery from the outside of the building. There is a double door leading into this cage-like structure, the outer door being a barred door, locked, and the inner door being a solid steel door with a glass aperture at about eye level. When you pass into this cage from the outside of the build-

ing, you are approximately 12 feet from the foot of the ladder. The ladder is to your right or to the south. On each level of the west gun gallery, there is a doorway at the place where the concrete wall, separating "D Block" from the main cell house would be, if it was extended across to the west end of the building. They are small doors made of a sound-proofing type of material, which are used to prevent drafts and noises from passing from one cell house to another. There is no lock on the doors. They are just swinging doors, swinging towards the D Cell House. The walkways in the west gun gallery on the lower and upper tiers vary in width from 39 inches to 41 inches. (T. 278-282.)

There is a gun gallery at the east end of the main cell house. It is constructed similar to the west gun galley, except that the west gun gallery has two short extensions about 30 or 35 feet long on the south wall of the D Cell Block area. There are no such extensions on the east gun gallery, which extends only across the main cell house and does not extend beyond the concrete wall over to the D Cell Block. (T. 282.)

There are two stairways leading from the lower tier of the west gun gallery to the upper tier. One is located at the southwest corner directly above the stairway which leads from the main level to the first tier. The other stairway is toward the northwest corner of the building and is about 20 feet from the northwest corner of the main cell house. At the west end of the main cell house there is a doorway leading



into the mess hall and kitchen. It is at the end of what is called "Broadway," namely, the passageway between the B Cell Block and C Cell Block in the main cell house. It leads to the dining-room and kitchen and the doorway and stairway to the hospital are in that area. (T. 283.) The hospital is located on the second floor of the portion of the building which serves as the dining-hall and kitchen. The dining-hall and kitchen are on the same level as the cell house. At the northwest corner of the main cell house there is a doorway leading to the basement. It is covered with a grille and bar-work extending up to and near the floor of the west gun gallery. In the basement, which is underneath the main cell house, there is a barber shop and shower room and clothing room and a music-practice room. At the east end of the main cell house there is a door leading from the administrative offices into the main cell house. (T. 283-284.)

On May 2, 1946, at 1:30 P. M., William A. Miller, the decedent, was on duty at the west end of the main cell house. Ernest B. Lageson was also a Guard on duty in the main cell house. At that time, Guard Lageson left the main cell house. The only inmate out of his cell in the main cell house at that time was Bernard Coy, whose cell was in B Block. He was a magazine orderly and, as such, it was his duty to pick up the magazines in the morning that were left in the cell bars and to re-arrange them in their regular magazine routes and to re-deliver them to the inmates for an evening reading. There were approximately fifty inmates in their cells in the main cell block at that

time. One of the inmates was Clarence Victor Carnes, who was celled in B Block. Inmate, Miran Edgar Thompson, was celled in C Block, in the main cell house at that time. Inmate, Joseph Paul Cretzer, was celled in C Block. Inmate, Sam Shockley, was celled in D Block. Guard Lageson left the main cell house at that time, leaving Miller, the only guard in the main cell house. (T. 613-614-615.) At 2:15 P. M. on that day Robert C. Bristow, employed as culinary supervisor in the Alcatraz Penitentiary, entered the east end of the main cell house from the front office and started down the corridor known as "Broadway," between B and C Blocks, toward the kitchen. When he arrived near the gate leading into the dining room, at the west end of the main cell house, he saw an officer's trousers and some keys lying on the floor. He stepped back and looked up into the west gun gallery and saw inmate, Coy, waving his arm over the side of the gun gallery. On his right, between the end of B Block and the stairs going down to the shower room was Inmate Carnes, and on top of the stairway leading down to the shower room was Inmate Hubbard. Inmate Hubbard was employed in the kitchen which is immediately west of the main cell block. (T. 618, T. 709.) Carnes moved over to the witness, Bristow, and told him to stand over out of sight of anybody who happened to be up around the other end of Broadway by the end of C Block, and then Carnes moved him away from the telephone, putting his arm around him. Carnes had a sharp instrument in his hand and put it against Bristow's

throat. Carnes said "Move over here." Bristow moved over between the end of C Block and the gun gallery out of sight of Broadway. After he moved over, he saw Inmate Coy pass a gun down to Hubbard and Coy hollered down to Carnes to put Bristow in the cell. Carnes, still holding the instrument in his hand, placed Bristow in the end cell of C Block, normally used as an officers' toilet, being cell No. 404. When Bristow got into the cell, Guard William A. Miller and two inmates, Moyle and Egan, were already in the cell. Miller was just standing inside the cell. He had on his shirt and his underwear. His hands were tied behind him. Shortly after Bristow was put in the cell, Custodial Officer Burdett, who had been stationed in the kitchen, was also put in the cell; then Guard Corwin, who was stationed in D Block was put in the cell; then Guard Lageson was put in the cell. Bristow recognized Inmates Coy, Cretzer, Shockley and Carnes outside the cell when these different men were put in it. Hubbard was running up, back and forth in front of the cell, with a rifle in his hand. Cretzer had a .45 automatic in his hand. After Carnes put Bristow in the cell, he took an officer's club. He was walking back and forth in front of the cell. Coy tried to lock the door of the cell after he had them all in there. Cretzer asked Lageson what key opened the outside gate leading into the yard, but Lageson would not tell him. He said he did not know which one. Inmates Moyle and Egan asked Cretzer and Coy to remove them to another cell and they moved them toward the east end of C Block. Coy,



Cretzer and Shockley then moved the guards into the next cell; that would be 403. Shortly after they moved the guards into that cell, Captain Weinhold was brought into the cell. (T. 474-486.) As Captain Weinhold was being placed in the cell, Shockley struck at him with his fist. (T. 1052.)

Subsequently, in the neighborhood of 2:15 or 2:20 P. M., Joseph H. Simpson, lieutenant of the custodial force of the Alcatraz Penitentiary, entered the east end of the main cell house and proceeded toward the west end of Broadway. He was seized by Defendant Thompson, who was armed with a rifle, by Cretzer who was armed with a .45 automatic pistol, and by Shockley who had a wrench or club in his hand. Robert Baker, the mail censor at the penitentiary, was with Simpson. Thompson, Carnes, Cretzer, Shockley and Coy took Guards Simpson and Baker to the south side of C Block and placed them in the third cell, No. 402. (T. 784-788.) Later, Carl W. Sundstrum, the record clerk of the penitentiary, was put in that cell by Shockley and Cretzer. Cretzer had a .45 automatic and Shockley had a wrench or club in his hand. As Guard Sundstrum came up to the door of the cell, Shockley hit him a few times in the face with his fist. Sundstrum was compelled to take his trousers off; a billfold fell out of his pocket and Cretzer asked for it and took the money out of the billfold. (T. 790.)

Burt A. Burch was on May 2, 1946, a custodial officer, assigned to the west gun gallery from 8:00 A. M. to 4:00 P. M. He was armed with a .3006 Springfield rifle with fifty rounds of ammunition and

a .45 caliber Colt automatic. He also had in his possession certain keys to doors in the cell blocks. (T. 406-407.) At about 2:00 o'clock he was in D Block section of the west gun gallery, on the lower tier. He walked in a northerly direction toward the wooden door which separates the D Block from the C Block in the gun gallery. As he approached the door, it was violently swung toward him. Inmate Coy, dressed in his underwear, jumped through the door and attacked Burch, knocking him down and beating him about the head and grabbing the rifle. Burch was knocked unconscious by Coy. (T. 408-411.) This was on the D Block side of the lower tier of the west gun gallery. Coy had entered the west gun gallery by spreading the bars that extended over the top of the gallery at its northerly extension at the end of the main cell block. For that purpose, he had used plungers from the toilet fixtures, which were later found on the floor of the gun gallery beneath the bent bars. When Burch revived consciousness, he was in the cell house side of the lower tier of the west gun gallery, ten or twelve feet beyond the door where he had been struck. His hands were tied behind him with his necktie. He was tied to an electric conduit pipe which comes out of the wall probably four feet up and extends down the wall. He was tied to that conduit pipe with a cord around his neck. He was alone in the gun gallery and his rifle, pistol and ammunition were gone. (T. 411-413.) He had on his underwear and shirt. His uniform and shoes were gone. Coy was gone. The keys were also gone. On the evening of May 2, 1946, other

guards succeeded in getting into the west gun gallery through the door from outside the building and found Burch in the gallery. Burch was then in the main cell house side of the west gun gallery. (T. 421.) He was relieved from the gun gallery on the following night, Friday, May 3, 1946, between nine and ten o'clock. At the time he was knocked unconscious by Coy, his rifle was loaded in the magazine with five cartridges. Besides those five cartridges, he had forty-five others, making a total of fifty rounds of ammunition. (T. 427.) At the time he was knocked unconscious by Coy, he had also a Colt automatic pistol, having one shell in the barrel and six in the clip. In addition to that, he had two fully loaded clips containing seven shells each. (T. 428.)

While Guards Miller, Burdett, Corwin, Bristow and Lageson were in the second cell, No. 403, Thompson, Shockley, Cretzer, Carnes, Hubbard and Coy were outside the cell. Cretzer asked Guard Miller for his keys and Miller gave him a ring of keys. The inmates named then went over to the door, leading into the outside courtyard and tried to get out. Key No. 107, which opened that door, had been given to Burdett by Guard Miller, when they were in the first cell or the officers' toilet and Burdett put it on the floor near the wall under a bench in Cell No. 404. The inmates came back to the second cell a number of times, and Coy asked what key opened the door, leading to the yard, and Miller told him, 107. The inmates were all looking for the 107 key. (T. 722-723-724.) At about this time, the prison siren went off. Inmates Cretzer, Carnes,

Thompson and Shockley were outside the cell where the guards named, with Captain Weinhold, were then confined. Cretzer had a .45 automatic, Carnes had a club and Shockley had no weapon at this time. Captain Weinhold spoke to Cretzer saying: "Cretzer, tell your boys not to go outside; if they do they will get hurt." Cretzer replied, "You mean they will get killed, don't you?" Shockley said, "We are going to kill all of you; kill all the sons of bitches." Then Thompson spoke up and said, "Yes, we want no living witnesses." Cretzer was speaking to Captain Weinhold. He said, "You are going to be the first one to die, the first son of a bitch to die," and then he shot him. He then shot Corwin and Miller. Bristow was not hit, but fell to the floor. Lageson and Burdett were sitting on the bed at the side of the cell. Cretzer shot at Lageson and Lageson fell over. Cretzer fired one shot at Burdett and missed. They all fell to the floor and played dead. (T. 488-490.) Then Cretzer went to the next cell, the third cell, which was No. 402, in which Guards Sundstrum, Baker and Simpson had been placed. Cretzer fired a number of shots into that cell, wounding Baker and Simpson. Cretzer then came back to the second cell, No. 403. Shockley looked into this cell and he saw Lageson sitting on the toilet seat in the cell and said, "There's one son of a bitch that hasn't even been hurt." Cretzer brought up his .45 to shoot Lageson and the gun snapped; it was empty, so he released that clip and inserted another clip and said, "I am sorry, Mr. Lageson," and fired. As he fired, Lageson fell forward on Burdett on the bed and pre-



tended that he had been struck. The bullet grazed his face. (T. 724-727.) Inmates Cretzer, Carnes, Thompson and Shockley then walked away from the cell toward the end of the cell block, west. (T. 727, T. 549-551, T. 627-630, T. 792-793, T. 842, T. 885-886-887, T. 1055-1056-1057.)

The guards were rescued from the cells in which they had been placed by the inmates late in the night of May 2, 1946. Guard William A. Miller died at the Marine Hospital, San Francisco, on the following morning. The officials of the prison succeeded, early in the evening of May 2, 1946, in getting guards into the west gun gallery through the outside door at the southwest corner of the building. A number of guards were wounded while making their way up the stairway to the lower tier of the gun gallery. Guard Harold Stites was killed while in the west gun gallery. When the prison officials succeeded in getting control of the corridors of the main cell block and of D Block, by controlling the east and west gun galleries, Inmates Cretzer, Coy and Hubbard took refuge in the utility corridor between the northerly and southerly tiers of cells of C Block. They were killed in this corridor and their dead bodies were found on the morning of Saturday, May 4, 1946.

**ARGUMENT.**

**(a) ADDRESSED TO THE POINTS RAISED BY APPELLANT,  
SAM RICHARD SHOCKLEY.**

**I.**

**The motions of the defendants to dismiss the indictment were properly denied.**

On July 9, 1946, defendants, Sam Richard Shockley and Miran Edgar Thompson, through their attorney, James E. Burns, filed in the United States District Court a motion that the indictment returned against the defendants be dismissed on the following grounds:

(1) The indictment was founded and returned upon illegal and incompetent evidence only and that no competent evidence was submitted to the Grand Jury establishing the commission of the offense set forth in said indictment or any lesser offense included therein.

(2) The indictment is duplicitous in that it charges in one count two distinct and separate offenses, to-wit: The murder in the first degree of a federal officer in violation of Title 18, U.S.C.A., Section 253, and in the same count a charge of murder in the first degree at or on a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof in violation of Title 18, U.S.C.A., Sections 451 and 452. (T. 20.)

The Government filed an opposition to this motion to dismiss. (T. 27-28.) James E. Burns submitted an affidavit, executed by himself, in support of the motion. (T. 21-27.) A counter-affidavit by Frank J.

Hennessy in opposition to the granting of the motion was filed on July 16, 1946. (T. 29.) An examination of the affidavits will show that no grounds were offered in support of the motion as to the first paragraph of the motion to dismiss, namely, that illegal and incompetent evidence only and no competent evidence was submitted to the Grand Jury. No reporter was present at the session of the Grand Jury at which the indictment was returned and no transcript of the evidence was taken at that session of the Grand Jury. (T. 29.)

As to the second paragraph of the motion to dismiss, the defendants are charged in the indictment with a single offense, namely, that on the 2nd day of May, 1946, at the United States Penitentiary at Alcatraz Island, California, they murdered William A. Miller, an employee of a United States Penal Institution at Alcatraz Island, California, while engaged in the performance of his official duties as such custodial officer. (T. 2-3.) These allegations constituted a murder committed in violation of Title 18, U.S.C.A., Section 253. There is but a single offense charged, namely, the killing of a federal officer. The fact that the killing took place at Alcatraz Island, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof, does not in any way make the indictment duplicitous. The ruling of the trial Court denying the motion to dismiss the indictment was therefore properly made.



## II.

The motions of the defendants for a separate trial were properly denied.

On July 9, 1946, the defendants filed a motion for a severance for purpose of trial through their attorney, James E. Burns. (T. 6-7.) Opposition to this motion was filed by the Government. (T. 37.) James E. Burns, the attorney for the defendants, filed an affidavit in support of this motion and Frank J. Hennessy filed an affidavit in opposition to the granting of it. On July 18, 1946, A. F. St. Sure, United States District Judge, denied the motions of the defendants for a severance for purpose of trial. (T. 41.)

On September 7, 1946, James E. Burns, as attorney for defendants Sam Richard Shockley and Clarence Victor Carnes, made another motion that they be granted a trial separate and apart from their co-defendant, Miran Edgar Thompson. This motion was supported by an affidavit of James E. Burns. (T. 43-47.) An opposition to the granting of the motion was filed by the Government on September 11, 1946. This opposition was supported by the affidavit of Frank J. Hennessy. (T. 51-55.) On September 12, 1946, United States District Judge Louis E. Goodman denied this motion. (T. 55-56.)

The orders of the District Court denying the motion for a severance were properly made.

Rule 8 (b) of the Rules of Criminal Procedure provides:

“Joinder of Defendants. Two or more defendants may be charged in the same indictment or in-

formation if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

Rule 14 of the Rules of Criminal Procedure provides:

"Relief from Prejudicial Joinder. If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants to an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires."

The granting or denial of a severance or separate trial to defendants jointly indicted rests in the discretion of the trial Court, which in the absence of good cause therefor, may in the exercise of its discretion properly refuse separate trials and whose grant or denial of a separate trial or severance will be upheld in the absence of an abuse of discretion, clearly shown.

*Latses v. U. S.*, C.C.A. Utah, 45 Fed. (2d) 949;

*Cochran v. U.S.*, C.C.A. Minn., 41 Fed. (2d) 193;

*Raarup v. U. S.*, C.C.A. La., 23 Fed. (2d) 547 (cert. denied).

There is no showing in this case that there was an abuse of discretion in the denial of the motions of the

defendants for a severance. The record in the case shows that the defendants suffered no prejudice through the failure of the Court to grant them separate trials.

### III.

**The motions of the defendants for a change of venue were properly denied.**

On July 9, 1946, James E. Burns, as attorney for defendants Sam Richard Shockley and Miran Edgar Thompson, moved the United States District Court to transfer the proceedings pending before it from the Northern District of California on the ground there existed in said District and Division so great a prejudice against the defendants that they could not obtain a fair and impartial trial in that Division and District (T. 10-11.) The motion was supported by an affidavit of James E. Burns, attorney for said defendants. (T. 12-16.) An opposition was filed by the Government to this motion to transfer the cause for trial. (T. 30.) This opposition was supported by the affidavit of Frank J. Hennessy. (T. 31-37.) The motions for transfer for trial were denied by District Judge A. F. St. Sure on July 18, 1946. (T. 41.)

The ruling of the trial Court in denying these motions for a transfer of the cause from the District for trial was properly made.

Rule 21 of the Rules of Criminal Procedure provides:

“Transfer from the District or Division for Trial.

(a) For prejudice in the District or Division. The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.”

An application for a change of venue on the grounds of prejudice is by the foregoing rule addressed to the sound discretion of the trial Court.

*U. S. v. Parker*, C.C.A. N.J., 103 Fed. (2d) 857 (cert. denied);

*U. S. v. Beadon*, C.C.A. N.Y., 49 Fed. (2d) 164 (cert. denied);

*Younge v. U. S.*, W. Va., 242 Fed. 788 (cert. denied);

*U. S. v. Stroud*, Kans., 251 U. S. 15.

The venue of a criminal prosecution is fixed by law and the Court has no power to change the venue, except on a proper showing and in strict conformity with the statute.

*Hale v. U. S.*, C.C.A. Okl., 25 Fed. (2d) 430.

Section 101, Title 28, U.S.C.A., provides as follows:

“Capital cases—The trial of offenses punishable with death shall be had in the County where the offense was committed, where that can be done without great inconvenience.”

“If newspaper articles furnished grounds for removal, no defendant could ever be tried in this County for a spectacular crime.”

*People v. Brindell*, 185 N.Y.S. 583, 194 App. Div. 776, 39 N. Y. Cr. 52.

“The test is whether there can be secured with reasonable certainty from the citizens of the parish and under the safeguards of the law, a jury whose members will be able to try the case on the law and the evidence, uninfluenced by what they may have heard of the matter and who will give the accused the full benefit of any reasonable doubt which may arise from the evidence or lack of evidence.”

*State v. Rini*, 95 So. 400, 153 La. 57;

*Error dis—Rini v. State of La.*, 263 U. S. 689.

“The fact that a murder case has excited public interest and has been discussed more or less is not ground for a change of venue.”

*State v. Rini*, *supra*.

“Newspaper articles with reference to the crime, even when denunciatory of accused, are not in themselves sufficient to show prejudice, unless they so arouse public hostility as to preclude a fair trial.”

22 C.J.S. 196.

There was no showing made in support of the motions of the existence in the Southern Division of the Northern District of California of a bias or prejudice against the defendants, rendering it improbable that they could, in this division and district, obtain a



fair and impartial trial. The mere fact that considerable publicity had been given both in the press and through the radio to the incidents resulting in the death of William A. Miller was not sufficient to justify the transfer of the cause. There was no showing that a fair and impartial jury could not be obtained in this division and district to try the defendants. The same publicity that had been given to the events in this district undoubtedly obtained throughout the entire United States. An examination of the transcript in this case will show an absence on the part of the jury of any prejudice or bias against the defendants. The defendants were given a full opportunity to examine the prospective jurors upon their *voir dire* and apparently were satisfied with the jurors selected.

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#### IV.

**The verdict of guilty is sustained by the evidence.**

The evidence in this case shows that on May 2, 1946, a conspiracy existed among a number of the inmates of the federal penitentiary on Alcatraz Island to escape from that institution; that the defendant, Shockley, became a member of that conspiracy and participated in it; that, in the course of the conspiracy and in furtherance of the common plan, Cretzer shot and killed Guard William A. Miller. In law, the act of Cretzer was the act of all who were members of the conspiracy at that time, and evidence of the conspiracy was admissible although the conspiracy was not charged in the indictment.

“Although conspiracy be not charged, if it be shown by the evidence to exist, the act of one or more defendants in furtherance of the common plan, is in law the act of all.”

*Davis v. U. S.* (5th Cir.) 12 Fed. (2d) 253  
(Cert. denied).

The conspiracy to escape contemplated what was done by Cretzer. It was part of the plan of the conspirators to seize the guns and ammunition of the guard in the west gun gallery, to overcome Guard Miller and the other guards in the cell blocks, and take their keys and release their co-conspirators from cells in which they were incarcerated, and arm themselves and use all necessary force, even to the extent of slaying in order to subdue the guards and escape from the penitentiary. The fact that the conspirators armed themselves with a rifle and a pistol and with clubs and wrenches and knives and daggers shows that they contemplated overcoming the resistance of the guards by murder, if necessary, in order to obtain their objective.

“The governing principle is the same when the substantive offense is committed by one of the conspirators in furtherance of the unlawful project. *Johnson v. United States*, 62 F. 2d 32, 34. The criminal intent to do the act is established by the formation of the conspiracy. Each conspirator instigated the commission of the crime. The unlawful agreement contemplated precisely what was done. It was formed for the purpose. The act done was in execution of the enterprise. The rule which holds responsible one who counsels, procures, or commands another to commit a crime



is founded on the same principle. That principle is recognized in the law of conspiracy when the overt act of one partner in crime is attributable to all."

*Pinkerton v. U. S.*, 328 U. S. 647.

The evidence clearly shows that not only was Shockley a member of a criminal conspiracy to escape at the time of the shooting of Guard Miller, but it also establishes that he was present at the shooting and aided and abetted and counseled Cretzer in the killing of Miller. As such, he was chargeable as a principal in the commission of the offense.

*Greenberg v. U. S.* (C.C.A. Mo.) 297 Fed. 45;

*Parisi v. U. S.* (C.C.A. N. Y.) 279 Fed. 253.

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission is a principal."

18 U.S.C.A. Sec. 550.

The defendant, Shockley, at the time of the break on May 2, 1946, was celled in D Block, which is the isolation section of the cell house. (T. 945.)

Cretzer, armed with a pistol, Hubbard, armed with a rifle, and Carnes armed with a club compelled Guard Corwin, who was on the floor of D Block to open the door leading from the main cell house into D Block. (T. 538.) They then entered D Block and succeeded in opening the cell doors on the two upper tiers of D Block. They were unable to open the doors of the cells on the ground floor of D Block because the mech-

anism used to open these doors was operated from the gun gallery. Shockley and other inmates of D Block were released from their cells. Shockley entered the main cell house from D Block. He joined the other inmates who were outside the cells where guards were confined. (T. 480-482; T. 549.) He assisted Coy and Cretzer in moving the guards from the end cell, 404, to the next cell, 403. (T. 485.) With Cretzer and Coy he assisted in putting Lieutenant Joseph H. Simpson and Robert R. Baker, the mail censor, in the third cell. (T. 487.) A little later he joined Coy and Cretzer in putting Sundstrum, the record clerk, in the same cell. (T. 516.) As Sundstrum was being put in the cell, Shockley looked at him and said, "You son-of-a-bitch," and hit him on the chin twice. (T. 882-883.) He also participated with Inmate Hubbard, who was armed with a rifle, and Inmate Carnes, who was armed with a wooden police club, in seizing Captain Henry W. Weinhold in the main cell house and in placing him in a cell. (T. 1050.) Weinhold was placed first in the end cell on the north end of B Block. His uniform coat and trousers were taken from him. Carnes, armed with a club, remained outside the cell. (T. 1051.) Weinhold was later removed from the cell in B Block and brought over by Carnes to the end of C Block. As he turned the corner of the cell block, he observed Cretzer and Shockley standing on the C Block side and they came and met him. Shockley struck at Captain Weinhold with his fist. Weinhold dodged him. Weinhold took a couple of more steps and Shockley struck at him again and hit him on the

back of the neck. (T. 1052-1053.) Cretzer, Shockley and Carnes then took Weinhold into the end cell, being the officers' toilet in C Block. He was then moved into the next cell. Shockley and Cretzer were standing there as he entered this cell. Cretzer had the .45 in his hand; Shockley was standing slightly behind his left side, slightly in back of him on the left side.

Captain Weinhold testified as follows:

"I started talking to Cretzer, telling him what a fool he was, what little chance he had of making a go of it.

Q. State what was said.

A. Well, I said to him, I said, 'You know you can't make a go of this.' He said, 'If we can get outside we can make it.' I said, 'No, even if you got outside, everyone would be killed.' He said, 'Well, we will kill a couple of you going out.' I said, 'That may be true, but I'll tell you, you are not going to get away with it. You know nobody does; you can't get away with anything on Alcatraz.' I said, 'The best thing for you to do is give me that gun and call this thing off.' I said, 'You will be done for and we will be done for, and everybody will be done for.' All the time I was talking to Cretzer, Shockley was standing in back of him, kept up a constant chatter, 'Kill the bastards, go on, kill the dirty God damned bastards, kill them, kill all of them, they're no damned good, let's kill them all.' He kept it up and he kept it up. I kept talking to Cretzer. Cretzer said, 'Well, we are going to kill all of you.' I said, 'That won't mean anything, you aren't going to die but once. The best thing for you

to do is give me the gun.' About that time the siren blew. When the siren blew Shockley said, 'There it is, go ahead, shoot him.' Cretzer pulled the trigger. I felt a shock here in my chest. Everything went a little hazy. My knees melted away from under me, and I lost interest in the proceedings for a while.

Q. Did you become unconscious?

A. Well, I think I did; at least, everything was hazy to me for a while. I can remember different instances—

Mr. Spagnoli. Just a minute. We object to any voluntary testimony.

The Court. He has been asked to state what occurred.

Mr. Hennessy. What is the first thing you recollect after the shooting?

A. Finding myself lying on the floor with my head in Corwin's lap; rather, on his knees and being aware that I had been injured. While I was lying there in that position I noticed three inmates tiptoe past the cell going toward the east end.

Q. Did you see the inmates?

A. Yes.

Q. Did you recognize them?

A. The first inmate going by the cell was Thompson, who had a rifle. The next one who went by was Shockley; I couldn't see whether he had anything in his hand, or not. He was followed by Cretzer, who still had the .45. They had only been gone past the cell a matter of moments when they came running back as fast as they could run; they came back past the cell and went to the west end.

Q. Towards the west end?

A. Yes. The next thing I recollect was being terribly cold and asking for someone to put a blanket over me. I don't remember seeing any other inmate from that time on." (T. 1054-1057.)

Robert C. Bristow, culinary supervisor or cook at Alcatraz Penitentiary, was the first officer to enter the main cell house after the seizure of Guard Miller. He entered from the front office at about 2:15 P. M. and went down Broadway. He was seized by Inmate Carnes, who held a sharp instrument at his throat and put him in the officers' toilet or end cell, No. 404, in C Block. (T. 476-477.) Shockley was present when a conversation occurred between Cretzer and Lageson as to what key opened the outside gate leading into the yard. (T. 482.) Shockley was also present with Coy and Cretzer when the guards were moved from the first cell to the officers' toilet in the second cell, or No. 403, of C Block. (T. 485.) Shockley, Cretzer and Coy put Lieutenant Simpson and Mail Censor Baker in the third cell, or Cell 402. (T. 487.)

In regard to the shooting, Culinary Officer Bristow's testimony is as follows:

"Q. You were in this No. 2 cell when the siren went off?

A. Yes.

Q. What happened after the siren went off?

A. Immediately after the siren went off Cretzer and Shockley came up in front of our cell and Captain Weinhold started to talk to Cretzer, told him not



to go outside into the yard, he thought they had the key.

Q. State what the conversation was, between Weinhold and Cretzer.

Mr. Spagnoli. We object on the ground it is hearsay.

Mr. Zamlock. We object on behalf of Carnes.

Mr. Hennessy. We submit it is part of the conspiracy.

Mr. Spagnoli. We object to the introduction of it until the corpus delicti is proven, until they establish the conspiracy.

Mr. Hennessy. We are establishing it step by step.

The Court. I will overrule the objection.

The Witness. A. Captain Weinhold said, told Cretzer, he said, 'Don't you boys go out into the yard, you are going to get hurt.' So Cretzer said, 'There is going to be a lot of guys get hurt before this is over, there will be lots of guys killed.' Shortly after that Shockley and Cretzer came over to the cell. Cretzer said to Captain Weinhold, 'You are going to be the first son-of-a-bitch to die.' He shot Captain Weinhold. Then he shot, emptied the clip right in the cell and Mr. Corwin got hit, and Mr. Miller got hit.

Mr. Sullivan. Just a second. If I understand correctly, these shots were fired into the cell next to the one you were in?

Mr. Hennessy. No.

The Witness. No. He shot into our cell. Captain Weinhold was the first one fired on.

Q. Who fired the shot?

A. Cretzer.

Q. Where was Shockley?

A. Standing right beside him.

Q. Did he participate in the conversation at all?

A. Told Cretzer to kill all the son-of-bitches, they was all sons-of-bitches.

Q. Who said that?

A. Shockley.

Q. Did Shockley have any weapon or instrument in his hand?

A. No.

Q. Tell us then what happened after Cretzer fired into the cell in which you were a prisoner?

A. After he fired into our cell then he stepped to the door and fired in there at those three fellows.

Q. What did you do after he fired into your cell?

A. I fell to the floor.

Q. He didn't hit you?

A. No.

Q. Was Bristow hit?

A. I am Bristow.

Q. Was Lageson hit?

A. No, not at that time, he was not hit.

Q. Was Corwin hit?

A. Yes.

Q. Where was he hit?

A. The bullet went in one side of his face and came out the other.

Q. Was Miller hit?

A. Miller was shot in the arm, here, somewhere, in the side.



Q. Was Captain Weinhold hit?

A. Captain Weinhold was shot through the arm and here on his right side.

Q. Was Burdett hit?

A. No.

Q. What did the men in the cell do after the shooting?

A. We all fell to the floor and played dead.

Q. After Cretzer had gone, after he had fired some shots in there, what happened?

A. After they fired in there they then came back after a while.

Q. Who came back?

A. Shockley and Cretzer.

Q. What happened?

A. Well, Cretzer was leading, and he walked past the cell and Shockley was right behind him. He looked into the cell and said, 'Here is a son-of-a-bitch in here that ain't been shot.' Cretzer started back and said, 'That's Mr. Lageson.' He said, 'He's my friend.' 'Friend, hell,' he said, 'he will go over to the Court and squawk just as loud; shoot the son-of-a-bitch.'

Q. Who said that?

A. Shockley.

Q. Do you see Shockley here?

A. Yes.

Q. Point him out.

A. The man sitting right over there, kind of bald-headed.

Mr. Hennessy. Will it be stipulated he points to the defendant Shockley, Mr. Sullivan?

Mr. Sullivan. Yes, I will stipulate.

Mr. Hennessy. Q. Then what happened?

A. Well, he starts shooting Mr. Lageson and the clip was empty. So he took the clip out, dropped it on the floor, put in another clip and told Mr. Lageson, 'I am sorry,' and he shot him.

Q. Did he hit Lageson?

A. Just hit the edge of his ear.

Q. What did Lageson do?

A. He fell over.

Q. Where were you after the second shooting?

A. I was kneeling at the end of the bunk, there.

Q. Were you on the floor?

A. I was down on my knees, yes, just leaning on the edge of the bunk.

Q. Did you remain in that position for some time?

A. No. Mr. Corwin fell over on my legs so I had to move my legs and stretch out.

Q. Did you remain on the cell floor for a considerable period?

A. Yes, until about 11:30 that night.

Q. Did the other guards who were in the cell with you keep on the floor, or stretched out on the bed?

A. Yes, in their positions. They remained there until we were rescued.

Q. Did you see any inmates out in the corridor about your cell?

A. No.

Mr. Zamlock. I ask the time be fixed.

Mr. Hennessy. After the shooting.

A. Yes, I could see them going back and forth in front of the cell.

Q. Did you recognize any of them?

A. At that time I was down below and all I could see was their feet, and up to their knees.

Q. Did you hear any conversation between them?

A. I heard a couple of them.

Mr. Zamlock. Just a minute. That is objected to as hearsay. It must be established that they were members of the conspiracy.

Mr. Hennessy. I will withdraw it.

Mr. Spagnoli. We object to it as hearsay.

The Court. It is withdrawn.

Mr. Hennessy. Q. What time were you removed from that cell, Mr. Bristow?

A. It was around eleven thirty Thursday night.

Q. Thursday night?

A. Yes." (T. 488-492.)

Guard Cecil D. Corwin, who was on the floor of D Block and was seized by Cretzer, Hubbard and Carnes, was first placed in the officers' toilet, namely, Cell 404, where Guard Miller and other guards were confined. Together with them he was later moved to the second cell, or Cell 403. (T. 546-547.) He was in this cell when Guard Miller, Captain Weinhold and Guard Corwin were shot. He testified to the conversation between Cretzer and Captain Weinhold. He testified that Hubbard, Carnes, Shockley and Thompson were outside the cell at the time of this conversation. (T. 549.)

Cecil D. Corwin's testimony as to the shooting is as follows:

"Q. Tell us just what happened then. Did Shockley have anything in his hands at that time?

A. No, sir.

Q. Did Carnes?

A. I don't know whether Carnes still had the club or not. I don't remember.

Q. Did Cretzer?

A. Cretzer had the .45.

Q. Did Hubbard?

A. Hubbard had the rifle.

Q. Tell us just what happened.

A. Captain Weinhold, after the siren blew, said, 'You don't have a chance now.' He said, 'You would be foolish to go outside. You will be killed.'

Cretzer said, 'If we can't go, if we are going to be killed, we are going to kill you, too,' standing there with the pistol pointed at us.

Q. Did any of the other inmates participate in the conversation?

A. Shockley did.

Q. What did Shockley say, if anything?

A. He said, 'Kill every one of the yellow-bellied bastards. We won't have any testimony against us.'

Q. Proceed and tell us what happened.

A. The Captain said—Cretzer said, 'If we are going to die, you are going to die, too.'

Captain Weinhold said, 'We can die only once.'

Cretzer said, 'Go ahead and die, you son of a bitch,' and pulled the trigger. Then he shot me.

Q. Did you know how many shots were fired into the cell?

A. I couldn't say. I was the second one fired on. I went down.

Q. Where were you shot?

A. Shot underneath this eye here and came out here.

Q. Is the vision of your left eye impaired, Mr. Corwin?

A. It is.

Q. When you were shot, did you become unconscious?

A. I don't think so. I seem to remember what went on, but I was on the floor on my face. I couldn't see anything. I heard, but I didn't see.

Q. Were you bleeding?

A. Yes, sir.

Q. What did you hear?

A. I heard him say—I don't know who said this, because I didn't see—he said, 'That man back there—there is a man back there that ain't been shot yet,' he said. And that was Mr. Lageson.

Q. That voice came from outside the cell?

Mr. Zamlock. I object to that on the ground it calls for the opinion and conclusion of the witness.

Mr. Hennessy. He is stating what he heard.

Mr. Zamlock. He added something. It is only the latter part of the statement I am objecting to.

The Court. The witness said the man in front said, 'There is a man who hasn't been shot.' The wit-



ness said he meant something to the effect that was Mr. Lageson.

Mr. Hennessy. I thought that was part of the conversation. It may go out.

The Witness. Mr. Lageson responded at once. That is why I presumed it was him.

Mr. Hennessy. Q. Tell us what you heard, not your conclusions.

A. All right.

The Court. Q. You said that someone said, 'There is a man who hasn't been shot.' And then you said Mr. Lageson responded, and then someone interrupted.

The Witness. He did. Mr. Lageson responded and said, 'Take it easy, Joe,'—that was Cretzer's first name. Cretzer said, 'I'm sorry, Mr. Lageson,' and pulled the trigger.

Mr. Hennessy. Q. At that time you were lying wounded on the floor?

A. That is right.

Q. Do you recollect anything else that happened at or about that time, Mr. Corwin?

A. Well, it was a sort of series of commotion, shots fired. I don't know at whom they were fired.

Q. Were you able to see or did you see any inmates outside the cell during the afternoon after you were shot?

A. I did not, no, sir.

Q. You were on the floor of the cell?

A. On the floor, yes, sir.

Q. Were you able to see outside the cell from where you were lying?

A. No, sir. I had this left eye—that was on the side the cell door would be on—that was blinded with blood.

Q. And you remained in that cell until what time?

A. It was after eleven. I don't know what time it was.

Q. On that same evening?

A. The same evening.

Q. Thursday night?

A. That is right.

Q. Then you were taken out with the other guards, is that correct?

A. Yes, sir." (T. 549-552.)

Guard Ernest B. Lageson entered the main cell house through the east end approximately ten minutes after two on the afternoon of May 2, 1946. He was seized by inmates Coy, Hubbard, Cretzer and Carnes. He was placed in the first cell, or the officers' toilet in C Block. Guard Miller and Steward Bristow were already in the cell. Guard Miller's thumbs were tied together behind his back. (T. 618-620.) Later Guards Lageson, Miller, Bristow, Burdett and Corwin were placed in the second cell, or Cell 403. Captain Weinhold was later placed in the same cell. Mail Censor Baker and Lieutenant Simpson, and Record Clerk Sundstrum were brought in and placed in the third cell, Cell 402. As Sundstrum was brought in Coy had him by the necktie and Shockley slapped him at least twice on the side of the face. (T. 624.) Cretzer

came to the front of the cell and asked which key opened the door to the yard. Mr. Miller said "107." At the time of this conversation between Cretzer and Guard Miller, Inmate Carnes was there and Inmate Shockley was there. (T. 625.) Carnes stationed himself in front of the cell with a club. Cretzer was there with the .45 and Shockley was making his way back and forth in front of the cells with a monkey wrench in his hand. (T. 626.)

Guard Lageson's testimony as to the shooting was as follows:

"Mr. Hennessy. Q. Then what happened, Mr. Lageson?

A. At that time Mr. Weinhold began to talk to Cretzer, trying to persuade him to give up the affair.

Q. Now, let's see. Who were present at this time?

A. Carnes, Shockley, Thompson and Cretzer.

Q. Where was Cretzer?

A. Cretzer was immediately in front of our cell.

Q. In front of Cell 403?

A. Yes, sir.

Q. Did he have anything in his hand?

A. He had the .45 automatic.

Q. Where was Shockley?

A. Shockley was behind him.

Q. Did he have anything in his hand?

A. I don't know whether he still had the wrench or not.

Q. Where was Carnes?

A. Carnes was standing in behind him and to the side of Cretzer.

Q. Did he have anything in his hand?

A. He still had the club.

Q. Where was Thompson?

A. Thompson was standing behind Cretzer, in back of him.

Q. Were the four men close together or was there quite a bit of space between them?

A. They were all fairly close together.

Q. Were they visible from where you were in Cell 403?

A. Yes, sir, they walked back and forth.

Q. Had the alarm gone off yet?

A. Not at that moment, no.

Q. What happened? What conversation did Weinhold have with Cretzer at that time?

A. He said, 'Cretzer, you are a damn fool to try it. You will never make it. In a little while the alarm will be out'. He said, 'You will just get killed'.

Q. Give us the entire conversation?

A. Cretzer said, 'Yes, yes'—sort of answered Mr. Weinhold in a dubious sort of voice. About that time the siren sounded. Mr. Weinhold said, 'There is the alarm out now. You haven't got a chance'.

Q. Then what happened?

A. Shockley then said, 'We will kill every son-of-a-bitch of them'.

Mr. Spagnoli. We ask that that go out, if your Honor please, on the ground that it is hearsay as far as Thompson is concerned.

Mr. Hennessy. It is all part of the *res gestae*.

The Court. Overruled.

The Witness. Then Thompson said, 'We don't want any living witnesses. Kill them all'.

Mr. Weinhold said, 'Well, you can only die once'.

Shockley said, 'You god-damned right and you are going to die and a whole lot more'.

At that moment Cretzer pulled the trigger and Weinhold dropped to the floor. He shot into the rear of the cell and Mr. Corwin, Mr. Bristow and Mr. Burdett and I all dived or fell, and he turned the gun on Miller, who was sitting on the bunk, and shot him. Miller sagged back on the bunk.

Q. Were you hit on this first shooting?

A. No, sir.

Q. Then what happened?

A. They walked to the next cell, 402.

Q. Who walked?

A. Cretzer, and shot into that cell a number of times. I don't know how many times.

Q. Did the other inmates accompany him when he went to Cell 402?

A. They all moved over that way with him.

Q. By 'all' who do you mean?

A. Cretzer, Carnes—or Carnes, Shockley and Thompson.

Q. Do you know how many shots were fired into the third cell?

A. I couldn't say.

Q. Then what happened?

A. Then Cretzer came back, and as he came back, Shockley and the others moved back with him.

Q. By the others, whom do you mean?



A. Carnes and Thompson, and Shockley pointed in at me. Apparently I had moved, or I was sitting there.

Q. Where were you?

A. I was sitting on the toilet stool at the end of the cell.

Q. In what posture?

A. I was sitting up leaning against the wall. Shockley pointed at me. He says, 'There's one son-of-a-bitch that hasn't even been hit'.

Cretzer said, 'Lageson is a pretty decent screw. He's always treated me right'.

Thompson said, 'We don't want any living witnesses anyway. Kill them all'.

Shockley said, 'No matter if he is your friend or not, he will go to town and squawk just as loud as any other son-of-a-bitch'.

So Cretzer aimed the gun at me. He said, 'I'm sorry, Mr. Lageson', and he pulled the trigger. The gun was empty, so the mechanism only clicked. So he took out the old clip, put in a fresh clip, cocked it, and drew another bead at me and fired again. I dived or ducked or something. The bullet grazed my left cheek and passed under my ear.

Q. Then what happened?

A. I was momentarily stunned by the force of the bullet, and I just laid as if I were quite dead.

Q. Where were the other occupants of the cell at that time?

A. Mr. Weinhold was lying on the floor right in front of the door. Mr. Miller was on the bunk. Mr.

Corwin was propped up in back of the cell up against the wash basin. Mr. Burdett was lying diagonally across the corner of the bed towards the end of the cell. And Bristow was on the floor, partly under the bunk.

Q. Did you continue in that posture for some time?

A. Yes, sir.

Q. How long?

A. Off and on until we were released.

Q. About what time were you released, Mr. Lageson?

A. I think I went out of the cell house somewhat after eleven. I don't know. I was the last one of the guards to go out.

Q. Did you see any inmates outside the cell after the shooting?

A. No, sir. Whenever I heard a sound as if inmates were coming, I went back into my dead position.

Q. Did you hear any sounds?

A. Yes, sir.

Q. Did you hear any voices that you could recognize?

A. No, sir." (T. 626-631.)

Joseph Vincent Burdett was the Guard in charge of the dining room on May 2, 1946. He entered the main cell house from the dining room about 2:15 on that afternoon. As he entered the main cell house, inmate Coy was standing between cell blocks B and C and gave him a signal, pointing toward D Block. Thompson was standing near a desk there with a wrench in his hand. Cretzer was just beyond him and

had a .45 in his hand. Shockley was standing near the door leading to D Block. He had nothing in his hands. Just to the right of Shockley, Hubbard was there with a rifle and just beyond Hubbard was Carnes with a club. Cretzer had the .45 on the witness and Hubbard had him covered with the rifle. They placed him in the first cell or the officers' toilet, No. 404. Guard William A. Miller and Guard Bristow were in the cell. (T. 710-715.) Miller's thumbs were tied behind his back. The witness asked Carnes if it would be all right to untie Miller's hands and he said "Yes." Burdett then slipped the cord off the hands of Miller and as he did so Miller handed him key 107, which fitted the door leading to the outside yard. (T. 715.) The witness, Burdett, took the key and laid it on the floor under a seat right against the wall. Shortly after, the Guards were moved from this cell to No. 403. (T. 716.) At the time the Guards were moved, there was a group of inmates around the cell and they all had a hand in it. The inmates were Cretzer, Thompson, Carnes, Shockley and Hubbard. (T. 717.) The witness saw Captain Weinhold when he was brought into cell 403. When Weinhold was put in that cell, Cretzer was along. Shockley was there and Thompson was there. The witness saw Guards Baker, Simpson and Sundstrum placed in the third cell, No. 402. Shockley was present at that time. Shockley walked up and hit Sundstrum a couple of times; he hit him in the face with his fist. (T. 720-721.) The witness heard a conversation between the Guards who were in the cell with him and the inmates, relating to the keys. Thomp-

son, Shockley, Cretzer, Carnes, Hubbard and Coy were present. (T. 722.) The conversation was between Cretzer and Guard Miller. Cretzer asked him for his keys and Miller gave him a ring of keys and the inmates then went over to the door leading into the outside courtyard and tried to get out. The inmates who went to the door were Coy, Cretzer, Carnes, Hubbard, Shockley and Thompson. They did not have key 107. The witness had placed it on the floor near the wall under a bench in cell 404. The inmates came back to the cell a number of times. They were all looking for 107 key. When the siren went off, inmates Cretzer, Carnes, Thompson and Shockley were present outside of cell 403 in which the witness, Guard Miller and other Guards were confined. Cretzer had a .45 automatic, Carnes had a club and Shockley had no weapon. (T. 722-725.)

The testimony of Guard Burdett as to the shooting is as follows:

“Q. In regard to this conversation that you heard between those inmates and Captain Weinhold, just tell us what happened?

A. Just after the siren sounded, the signal there was trouble, why, Captain Weinhold called Cretzer. He said, ‘Cretzer, tell your boys not to go outside, if they do they will get hurt.’

Cretzer says, ‘You mean they will get killed, don’t you?’

Shockley—he says, ‘We are going to kill all of you, kill all the sons of bitches’, and they were talking and then Thompson, he spoke up, he said, ‘Yes, we want



no living witnesses'. Cretzer was talking to Captain Weinhold. He said, 'You are going to be the first one to die, the first son of a bitch to die', and he shot him.

Well, as the Captain fell to the floor, he shot Mr. Corwin and he fell. He turned next—Mr. Lageson and I were sitting on the bed at the side of the cell. He shot Mr. Lageson. As he shot Mr. Lageson I fell with him at the same time. He fired one shot at me and missed. Then he went over to the next cell and he fired——

Q. By 'the next cell', what cell do you mean?

A. That was—I was in 403, and he went in to 402.

Q. That was the third cell?

A. That was the third cell.

Q. Was that the cell in which Sundstrum, Baker and Simpson had been placed?

A. Yes, it was.

Q. Could you see the front of that third cell from where you were?

A. No, I couldn't see the front of the cell, but I could see the men in the front of the cell.

Q. Could you see what inmates were around in front of that third cell?

A. Shockley and Cretzer. Cairnes was standing further back from it.

Q. Tell us just what you saw or heard?

A. Well, Cretzer stepped over there in front of the next cell and he fired. I could see him firing the shots. He fired, I believe, three shots into that cell. Then he came back, Cretzer and Shockley, they stepped back in front of our cell. Shockley looked



into our cell, he seen Mr. Lageson sitting on the toilet seat in the cell. He said, 'There's one son of a bitch that hasn't even been hurt', and he says about me, he said 'How about that big son of a bitch in there?' Shockley said, 'I shot him'. Then he brought his .45 up to shoot Mr. Lageson and the gun snapped, it was empty, so he released that clip from the .45, inserted another, and says, 'I am sorry, Mr. Lageson'.

Q. Who said that?

A. Cretzer. He said, 'I am sorry, Mr. Lageson,' and fired. Well, as he fired, Mr. Lageson fell forward on me on the bed. Then they walked away from the cell. They were gone for——

Q. Who walked away from the cell?

A. The inmates.

Q. What inmates?

A. Cretzer and Carnes and Shockley and Thompson.

Q. What direction did they go?

A. They walked toward the end of the cell block, west.

Q. Did you hear any shots fired into the third cell after that?

A. Yes, sir, I did.

Q. Were you able to see who fired the shots?

A. I did.

Q. What did you see?

A. They came back to the cells a little while later and they looked me over and they said, 'I guess they are all dead in that cell. They haven't changed positions.'

Q. Who said that?

A. Cretzer said that. And then they moved over to the next cell, and there were two shots fired into the cell.

Q. Into what cell?

A. Into cell 402. That was the cell next to the one I was in.

Q. Did you see any inmates outside the cell in which you were incarcerated, 403, after this last shooting into the third cell?

A. Yes, sir, I did.

Q. What inmates did you see?

A. Coy was back in front of the cell; Cretzer was back in front of the cell; Shockley was back in front of the cell; and Thompson.

Q. You were not hit at any time, Mr. Burdett?

A. No, sir, I was not hit.

Q. In what position did you remain after the shooting into the cell by Cretzer?

A. Well, I was sitting on the side of the bed with my feet down, and when they shot I just turned and fell on my face across the corner of the bed, and I was lying with head down over the corner of the bed so I could see out in front of the cell.

Q. What time of the evening were you rescued from that cell, Mr. Burdett?

A. Around eleven o'clock." (T. 725-728.)

Joseph H. Simpson, Lieutenant of the Custodial Force at Alcatraz Penitentiary, entered the main cell house from the front office in the neighborhood of 2:15 or 2:20 on the afternoon of May 2, 1946. He pro-

ceeded down Broadway when he observed inmates, Thompson, Cretzer, Carnes and Shockley. Thompson had a rifle, Cretzer had a .45 automatic pistol and Shockley had a wrench or club, he had some object in his hand. Mail Censor Baker was accompanying Lieutenant Simpson at the time. Thompson, Carnes, Cretzer, Shockley and Coy took them around and placed them in the third cell of C Block, No. 402. There were four or five inmates right there together that put Simpson and Baker in the third cell. There were Coy, Thompson, Cretzer, and Shockley. Carnes was walking along with them. Thompson had the rifle, walking along with the Guards and poking them in the backs with it, telling them to step up. Record Clerk, Sundstrum, was later put in the cell, No. 402. Cretzer had a .45 automatic and Shockley had a wrench or club, as near as the witness, Simpson, could remember. When Sundstrom came up to the door of the cell, Shockley hit him a few times in the face with his fist. (T. 788-789.) When the siren went off, Cretzer, Shockley and Hubbard were directly in front of the cell they had Simpson in. There was some shooting at the west end of the Block. The next thing, Cretzer was standing in front of the cell in which Guards Simpson, Sundstrum and Baker were in. He fired, hitting Lieutenant Simpson. Then Shockley said, "That's Baker, the mail censor, he ain't no good, shoot him too," or "kill him too." Then Cretzer fired and hit Baker in the leg. (T. 792-793.) After the shooting, Lieutenant Simpson saw the inmates milling around out in front of the cell. He saw Coy, Cretzer, Carnes and Shockley out there later on. (T. 793.)

Robert R. Baker, the Mail Censor and Guard at Alcatraz Penitentiary, entered the main cell house from the administration section of the building at the east end about 2:30 on the afternoon of May 2, 1946. He was accompanied by Lieutenant Simpson. He walked down Broadway to the west of the cell house and made a left turn there and was confronted with about eight prisoners. Those that Baker remembered were Carnes, Cretzer, Coy, Thompson, Fleish and Shockley. Carnes had a club in his hand; Cretzer had a .45 automatic pointed at Guard Baker; Thompson had a rifle in his hand; Coy didn't have anything in his hand; Fleish was standing in the D Block door; Shockley was over towards D Block, more or less the same—right with Cretzer. (T. 834-836.) Thompson pointed the rifle. He told the witness and Guard Simpson to move over towards the west. He said, "Get along." At the same time, Cretzer aimed the .45 at Baker. He said, "Get along here." Guards Simpson and Baker were put in the third cell, No. 404: that is the officers' toilet. The inmates tried to close the door, but couldn't, so Cretzer, with a pistol, and Coy, who had been standing there, walked over and moved Guards Simpson and Baker from cell 404 to cell 402. That is the third cell. Cretzer, Shockley and Coy were outside the cell; then Sundstrum, the Record Clerk, was brought in by Cretzer and Coy. As he got to the door, Shockley struck Sundstrum twice on the side of the face. They put Sundstrum in the cell with Guard Simpson and Guard Baker. (T. 837-840.)

Carl W. Sundstrum was on May 2, 1946, Record Clerk of the Alcatraz Penitentiary. He entered the



main cell house about 2:25 in the afternoon of that day, shortly after Lieutenant Simpson and Mr. Baker. He went through the main gate at the east end of the cell house. He walked down Broadway towards the west end of the cell house. Thompson stepped out and pointed a rifle at him. (Tr. 877-878.) Just about that time another inmate named Coy came from behind B Block and grabbed him by the necktie. Cretzer stepped from behind Thompson and pointed a .45 at him. Hubbard was a little ways from Thompson, not very far from Cretzer. He didn't see anything in Hubbard's hand. Coy had what looked like some kind of butcher knife in his hand. Carnes was standing by the table where the Associate Warden has interviews. He had a kind of billy club in his hand. Cretzer, Coy and Thompson took Sundstrum over towards D Block. As he went past the second cell in C Block he saw Miller looking out. He also saw Captain Weinhold standing in the second cell looking out through the bars. There were three or four other men in there at that time. (T. 880-881.) When he got in front of the third cell of C Block inmate Shockley appeared. Shockley looked at him and said: "You son-of-a-bitch," and hit him on the chin twice. (T. 882-883.) They then put him inside the third cell where Lieutenant Simpson and Baker were confined. Cretzer directed him to take off his pants, and as he was taking off his pants, his wallet fell out of his pocket on the floor. As he started to pick up the wallet Cretzer said: "What's that?" Sundstrum said: "My wallet." Cretzer said: "Let's have it." So Sundstrum handed it to him. He opened the wallet and took \$92.00 in currency out of the wallet.



Then he handed Sundstrum back the wallet and he laid the wallet on the bed. As Cretzer took the money out of the wallet and put the money in his pocket and handed back the wallet, he said: "You can call this highway robbery." Then he took Sundstrum's pants. (T. 883-885.) He then walked away from the cell and came back a little later. Shockley came back with him. The witness did not see anything in Shockley's hand. (T. 885.)

Sundstrum testified as follows as to the shooting:

“Q. What happened then?

A. I walked to the back of the cell and found a pair of pants hanging up on a nail there in back of the cell. I put those pants on. While I was standing in the back of the cell putting these inmate's pants on Shockley and Cretzer came back in front of the cell and Shockley says: 'Kill all the sons-of-bitches, we don't want any witnesses.'

Q. Then what happened?

A. I was in back of the cell wrapping these pants around me, they were too long for me, I was wrapping them around, these pants, trying to make them fit. I just looked up to the front of the cell, then I heard someone say: 'You can't get out, anyway, you might as well give up, somebody is going to get hurt.'

Q. Where did that voice come from?

A. That was out of the next cell.

Q. Did you know whose voice it was?

A. It was Captain Weinhold.

Q. Did you recognize his voice?

A. Yes, I did.

Q. Then what happened?

A. Cretzer said: 'You will be the first one to get hurt.' Just about that time I heard the siren blow, the escape siren over there. Then all of a sudden Cretzer shot. He had this .45 in his hand, and he shot, he shot into the next cell. He said, 'You will be the first one to get hurt,' and he shot into the next cell. Then he whipped the gun around to shoot into our cell, and he shot Lieutenant Simpson right in the chest, there (indicating). I was still standing in the back of the cell watching him.

Q. Where was Simpson?

A. Simpson was sitting on the bunk next to Baker. He was farther away from the front end. Well, Baker was sitting on the bunk near the bars, near the front of the cell. Then he whipped the gun around to shoot Baker. Then he pointed the gun in my direction and when he did that, I dropped on the floor and fell with my head over against the bunk and my legs out sideways. I just laid there. I heard a big bang, I don't know where the bullet went, but it missed me.

Q. Was there any inmate outside the cell when Cretzer fired into the cell, the third cell?

A. Shockley was still standing there. I didn't see any other inmates right then. All I saw was Cretzer and Shockley. I don't know about the others.

Q. Where were they?

A. Standing up in front of the cell, outside, kind of—Cretzer was standing with his body like between the two cells.

Q. Where was Shockley?

A. Shockley was standing over a little ways, it would be to his right, about two or three feet of the right hand of Cretzer.

Q. Do you know how many shots were fired in the second cell before the shooting occurred in that third cell?

A. It seemed to me he fired one shot into that cell next to us, and then after that he shot Simpson and Baker, and then he pointed the gun at me and pulled the trigger and I fell on the floor.

Q. Then what happened?

A. I laid there with my head against the bunk and my feet stretched out; I just laid there like I was dead. I didn't move, just laid there, and then I heard a lot more shooting going on in the next cell. I heard 'Bang,' 'Bang,' 'Bang,' about five or six or seven times, I don't know how many times; then they shot into our cell a couple of more times.

Q. Did you see who shot into your cell the second time?

A. No. I had my head down, like this (indicating); I just heard the shooting. I heard Simpson say: 'He shot me again,' and then I heard Baker say: 'He shot me again,' words to that effect.

Q. You did not see who fired those second shots?

A. No; I had my head down like this (indicating) between the edge of the bunk, and there is a round lavatory there, and the left side of my head was kind of against the lavatory, and the right side of my face was against the edge of the bunk; my legs sprawled out.

Q. How long did you remain in that posture?

A. Must have been an hour there before I even moved.

Q. Did you hear or observe any convicts outside the cell in that hour?

A. Yes, I heard inmates walking back and forth in front of the cell.

Q. Did you see them?

A. I didn't look.

Q. Did you hear any conversation between the inmates walking back and forth?

A. Just before they came back and Simpson was shot the second time, and Baker was shot the second time, I heard someone say at that point, 'They are not dead there, they moved,' and that was when Simpson was shot again, and then that was when Mr. Baker was shot again, the second time.

Q. When were you rescued, Mr. Sundstrum?

A. It was pretty close to about quarter to eleven that night." (Tr. 885-888.)

The evidence clearly establishes that Shockley was present at the time of the shooting and actively aided and abetted and counseled Cretzer in the killing of Miller and the wounding of the other guards.

When the prisoners in D Block were checked on the morning of Saturday, May 4th, Shockley was found in Cell 26 on the second tier of D Block. The evidence seems to have established that Shockley was in Cell 26, although there is some difference between the testimony of the guards and the convicts on that subject. In the cell with Shockley at that time were

convicts Edwin W. Sharp, Howard Butler, Jack Pepper and James H. Quillan.

Sharp testified that after the siren blew he went in to Cell 26—Shockley's cell. (T. 1377.)

“Q. Who went in the cell?

A. Well, me and Quillan; a fellow by the name of Butler, and after a time, why, Shockley came up.” (T. 1378.)

Sharp also testified as follows:

“Q. When you were in this cell No. 26 do you remember seeing Shockley take some currency out of his pocket and tear it up?

A. He tore something up; I don't know whether money or not.

Q. What did he do with it?

A. He put some in the toilet.

Q. Did he flush the toilet?

A. Yes.” (T. 1380.)

Jack Pepper, an inmate of Block D, was called as a witness by defendant Shockley, and testified as follows:

“Q. Did you see Shockley tear up any money while he was in that cell with you on that day?

A. Yes.

Q. What did he do?

A. He just pulled some money out and tore it up.

Q. What did he do with the money?

A. Threw it in the toilet.

Q. Flushed the toilet? Did he make any statement while he was doing that?



A. No, not that I can recall.

Q. Didn't he at that time and place say: 'This will be of no good to me now?'

A. I don't recall.'" (T. 1412-1413.)

Howard Butler, an inmate of Block D, was found in the same cell occupied by Shockley when the check-up was made of Block D by the prison officials on the morning of Saturday, May 4, 1946. He testified as follows:

"Q. What did all the inmates do, as far as you observed, when the siren blew in D Block?

A. They started to make way to get into the cells the closest to them.

Q. Do you recall whether or not a group of you were assembled in front of cell 26?

A. The group of us was assembled but it was not in front of cell 26.

Q. What cell did you go into?

A. I went into 26.

Q. Do you remember seeing Shockley at any time?

A. No, he was not there.

Q. Shockley was not there at that time?

A. No.

Q. How soon after the siren blew did you see Shockley?

A. Well, I couldn't say exactly, with the excitement and everything, I wouldn't be certain for accuracy.

Q. What is your best estimate as to the time?

A. Well, I would say about fifteen or twenty minutes after the siren.

Q. When Shockley came to the cell were the other inmates that you have already mentioned in cell 26 there?

A. Yes." (T. 1423-1424.)

The Record Clerk, Sundstrum, testified that Cretzer had taken currency from his wallet. Apparently Cretzer gave the currency to Shockley, and Shockley destroyed it when he returned to his cell in D Block, and flushed it in the toilet in the cell. The testimony of Shockley's own witnesses discloses that it was a considerable period after the siren went off that Shockley returned to his cell in D Block. The testimony of the Government's witnesses proves conclusively that at the time of shooting Miller, Shockley was present with Cretzer. Therefore, he could not have abandoned the conspiracy prior to the shooting of Miller.

## V.

**The finding of the jury as to the sanity of defendant Shockley is supported by the evidence.**

The Court submitted the question of the sanity of Shockley to the jury under proper instructions. (T. 2143.) The jury by its verdict found Defendant Shockley to be sane at the time of the slaying of Guard Miller.

On October 28, 1946, at the request of counsel for defendant Shockley, the Court appointed Dr. John Alden to conduct a mental examination of Shockley. Dr. Alden visited Shockley at Alcatraz on November 5, 1946. Shockley was in his presence a little over an hour and that was the only occasion upon which he

visited Shockley. He rendered a report to the Court, to which he testified on the trial when called as a witness by the defendant Shockley. In his report to the Court he stated:

“The next question concerns the subject’s legal sanity: In my opinion, at the time of my examination on November 5, 1946, Sam Richard Shockley was able to understand the nature and consequence of his actions, was capable of understanding the nature of the charges against him, was able to confer with his attorney, and was capable of preparing his defense.” (T. 1300.)

Dr. Alden further testified at the trial as follows:

“Q. When you made that statement in your report did you refer to Shockley’s mental condition, mental state and condition at the time of the May 2nd break?

A. No, I was referring only to his condition at the time of my examination on November 5.

Q. Did you form an opinion as to his mental condition at the time of the May 2nd break?

A. No, I did not have any information concerning his action at the time or immediately preceding or following that time, and I had no reason, no evidence on which to form such an opinion.” (T. 1300).

On cross-examination, Dr. Allen testified as follows:

“Q. Now, from your entire examination of this man you came to the conclusion as expressed to the court, that he knew the nature of the acts in which he was engaged at the time you examined him?

A. That is right, yes.

Q. And he was in a competent mental condition to prepare and present his defense to the court?

A. Yes.

Q. You also believed that he knew the difference between right and wrong, didn't you?

A. Well, I didn't use that phrase, because it is a legal term and I was trying to stick as closely as possible to the medical facts.

Q. You never made any physical examination of the man, at all?

A. No.

Q. You never gave him any tests of any kind?

A. No special tests, no." (T. 1313-1314.)

Reading the entire testimony it is apparent that he did not express any opinion as to the sanity of Shockley on May 2, 1946, at the time of the slaying of Guard Miller.

Counsel for defendant Shockley placed upon the stand a number of the inmates of D Block and attempted to elicit from them, as intimate acquaintances, their opinion as to the sanity of Shockley on May 2, 1946. These witnesses were permitted by the Court to testify to their observations of Shockley and as to his conduct and appearance. With possibly one exception, the Court ruled that they did not qualify as intimate acquaintances and refused to permit them to give their opinions as to his sanity.

The admission or exclusion of the opinion of a lay witness as to the sanity of a person is within the trial Judge's sound discretion.

*Taylor v. United States*, 71 F. (2d) 76.

His determination of the matter will be reviewed or reversed only where there has been a clear abuse of discretion.

*Estate of Perkins*, 195 Cal. 699.

“Whether or not a witness may testify as an intimate acquaintance is a question of fact for the trial Court to determine. The Court is vested with a wide discretion and its determination will be interfered with upon review only in case the Court has abused its discretion.”

*Estate of Perkins*, supra;

*Atkins Corporation v. Tourney*, 6 Cal. (2d) 206;

*In re Hill*, 13 Cal. App. (2d) 326.

An examination of the testimony of the various inmates, whose opinions were requested by counsel for Shockley, will disclose that the Court was fully justified in ruling that they did not qualify as intimate acquaintances. They did not possess that personal, confidential and familiar relation with Shockley that would constitute them as intimate acquaintances of him.

There was no impropriety in the comment by the trial Court when the attorney for Shockley attempted to elicit from Henri Young his opinion as to the sanity of Shockley. It was the duty of the Court in passing on the question of whether a particular witness was an intimate acquaintance to weigh the credibility of the witness.

“The comments of the Court on occurrences during the trial or on the evidence where he is authorized to comment thereon, will not be reviewed



or held erroneous except for an abuse of discretion.”

*Heslin v. Malone*, 116 Conn. 471.

In determining the question of the sanity of Shockley, the Jury had ample opportunity to observe him throughout the trial of the case and also his demeanor and testimony when on the witness stand. On cross-examination Shockley testified very clearly as to the incidents of his life occurring years ago, but suffered a convenient lapse of memory when questioned concerning the happenings at Alcatraz Penitentiary on the afternoon of May 2, 1946. (T. 1568-1578.)

When Robert C. Bristow was upon the witness stand, he testified to the conduct of Shockley on the afternoon of May 2, 1946. On cross-examination by the attorney for defendant Shockley, he was asked the following questions to which he gave the following answers:

“Q. How was Shockley acting when you first saw him?

A. Acting definitely sane, so far as I could tell.

Q. I mean did he walk around, did he jump around, or what did he do?

A. He just acted like he wanted to get rid of a bunch of guards.” (T. 500.)

On cross-examination by the attorney for defendant Shockley, Cecil D. Corwin testified as follows:

“Q. Did you see anybody else milling about the corridor here outside 404?

A. I saw Shockley.

Q. Who else?

A. I saw Hubbard.

Q. When you saw Shockley isn't it true he was running around like a crazy man?

A. Well, I don't know how to answer that question. I don't know how crazy men run around.

Q. Just describe his actions.

A. Well, he seemed to be—he was excited, yes, if that is what you mean. He was urging Cretzer to kill us.

Q. As a matter of fact, prior to this altercation with Cretzer shooting, didn't you see Shockley run around beating his breasts, shaking his fists, running around excitedly up and down the corridor?

A. No, he walked by there and he said, 'Kill every one of the yellow-bellied bastards so they can't testify against us.'

Q. Prior to that, though, did you see him do anything unusual?

A. No." (T. 586-587.)

Guard Lageson, on cross-examination by the attorney for defendant Shockley, testified as follows:

"Q. Did you see Shockley at that time and place?

A. No.

Q. How long after was it you saw Shockley?

A. I saw Shockley after I was locked in cell 403.

Q. You were already a hostage?

A. Yes.

Q. Was there anything unusual about Shockley's appearance when you saw him?

A. No.

Q. Isn't it a fact he was running around yelling, hollering?

A. They were all doing that.

Q. I asked you about Shockley?

A. He might have been.

Q. You testified at the Coroner's Inquest, didn't you in this case?

A. Yes.

Q. I will show you page 45, line 21—would you examine this? It starts with the middle of this answer here. (Handing document to the witness.) I will ask you if at the Coroner's Inquest in this case you gave this part of an answer on page 45: 'They seemed to be having trouble with the keys and in the meantime I saw two more inmates, Thompson and Shockley; Shockley had a pipe wrench that apparently had been taken out of the utility corridor, and he was running back and forth with the pipe wrench, hollering curses and yelling.' Do you remember that?

A. Yes.

Q. Was there any reason why you don't want to testify to that today?

Mr. Hennessy. I submit that is improper cross-examination.

The Court. Sustain the objection.

Mr. Sullivan. Is the objection sustained?

The Court. Yes.

Mr. Sullivan. Very well, your Honor.

Q. Now, Mr. Lageson, isn't it a fact that at that time and place Shockley was running around like a madman?

A. I have never seen a madman; I don't know.

Q. Isn't it a fact that Shockley was running up and down with a wrench in his hand, shaking it at everybody and yelling curses?

A. I didn't see him shaking it at any time. He was running up and down with it, yes. He was also cursing.

Q. Isn't it a fact he was acting differently than the other convicts at that time and place?

A. No; he was no more excited than any of the others were.

Q. You have known Shockley for some time?

A. Yes, I know him since I came to work there.

Q. You have been on duty in D Block?

A. Yes.

Q. Isn't it a fact all the time he has been in there he remains in there?

A. Yes.

Q. He is very uncommunicative, so it would be unusual for him to be running around screaming and cursing and making any noises whatsoever, wouldn't it?

A. I wouldn't be the judge to say whether it was unusual. He was doing that.

Q. You remember seeing him do it before?

A. I never saw him under those conditions before.

Q. You had never seen him talk to anybody before, had you?

A. He used to talk to me.

Q. But you did not see him talk to the other inmates?

A. Yes.

Q. Very, very few occasions, though?

A. He used to speak, they used to yell from cell to cell.

Q. Isn't it a fact he has kept mostly to himself in that cell?

A. He has been by himself quite a bit, yes." (T. 641-644.)

Guard Joseph H. Simpson, on cross-examination by the attorney for defendant Shockley, testified as follows:

"Q. You were well acquainted with Sam Shockley?

A. I knew him, yes.

Q. In the course of your duties have you had occasion to frequently go into D Block?

A. I did.

Q. Did you have a chance to observe Shockley very often in there.

A. I saw him as a rule when I went in there, yes.

Q. Did you observe him frequently enough to form an opinion as to his intelligence?

Mr. Hennessy. I submit we are not concerned with his intelligence, but more with his sanity.

Mr. Sullivan. I will withdraw it.

The Witness. I don't think I am qualified to answer that. I never——

Mr. Sullivan. Q. Well, I will rephrase the question. Do you know, or do you think you know him well enough to form an opinion, or express an opinion regarding his sanity?

A. No, I do not.

Q. You have had an intimate contact with him?



A. Not enough to tell that, no.

Q. From your observation of Shockley would you say he has been rather uncommunicative with the other prisoners?

A. No, I wouldn't say that.

Q. You know while he is in D Block he has been forbidden to communicate with prisoners in the main cell house?

A. That is a standing rule.

Q. That is a standing rule?

A. Yes.

Q. From your observation of him in D Block have you observed whether or not he frequently has conversed with the other prisoners in D Block?

A. I noticed nothing about his actions that showed him any different than any of the other inmates in D Block.

Q. You knew he had been put in solitary confinement on several occasions?

Mr. Hennessy. I object to that as not proper cross-examination.

The Court. I will overrule the objection. He may answer if he knows.

The Witness. Yes, I know. I knew he had been placed in solitary.

Mr. Sullivan. Q. From your experience with prisoners over there, you know when they come out of that place, a place like that, very, very frequently they are not normal and rational human beings?

Mr. Hennessy. I object to that as calling for a conclusion of the witness and not proper cross-examination.

The Court. It calls for the opinion, that is true. I think you can ask him what he observed concerning such matters. I think the objection is more to the form of the question.

Mr. Sullivan. Very well.

Q. On the various occasions you observed Shockley come out of solitary confinement have you observed anything unusual about his conduct after he came out of solitary?

A. No.

Q. Would you say his attitude was just as obedient and respectful towards you and other officers as it would be from a prisoner who had the general run of the cell house?

Mr. Hennessy. I object to that as calling for a conclusion of the witness.

The Court. I will sustain the objection. Ask him what he saw or observed.

Mr. Sullivan. Q. Did you observe anything unusual about Shockley's appearance and attitude on coming out of solitary?

A. What I observed of Shockley was that he resented any kind of authority.

Q. He did. Was that attitude toward authority more pronounced when he came out of solitary than on other occasions?

A. No.

Q. You are sure of that?

A. That is my opinion." (T. 795-797.)

Guard Carl W. Sundstrum on cross-examination by the attorney for Shockley testified as follows:

“Q. Shockley was not doing time for murder, though, was he?

A. No, he was doing time for something else.

Q. For bank robbery?

A. Kidnapping.

Q. Bank robbery and kidnapping, that is right, but as between the two men you knew Cretzer was the more vicious, didn't you?

Mr. Hennessy. I object to that as calling for the opinion of the witness.

The Court. If he wants his opinion, I will allow the witness to answer it.

The Witness. What was that question?

Mr. Sullivan. Q. I said as between the two men you knew Cretzer was the more vicious, didn't you?

A. No, I knew Shockley was the one who hit me on the chin.

Q. I didn't ask you that. I said as between Cretzer and Shockley, you knew Cretzer was the more vicious?

A. I would say there were both vicious.

Q. They were both vicious?

A. Yes, I would say.

Q. You say Shockley was a vicious criminal?

A. I would say so.

Q. In your opinion?

A. In my opinion.

Q. A big stalwart sturdy criminal—is that your definition of Shockley?

A. I just——

The Court. He did not say that, Counsel.

The Witness. I just said he was vicious, that is all.

Mr. Sullivan. Q. Vicious mentally or vicious physically?

A. Just vicious.

Q. Would you include the physical temperament in that respect?

The Court. I have allowed this examination to proceed, but you have gotten far afield.

Mr. Hennessy. I will object to the question on the ground it is not proper cross-examination.

The Court. It is argumentative. I think perhaps the Court was wrong in allowing the examination to proceed, but Counsel seemed to want to go into those matters of the opinion of the witness, and it leads us astray when you do that.

Mr. Sullivan. Q. Isn't a fact, Mr. Sundstrum, during the period of time that you saw Shockley that day he was running around there in an irrational manner, shouting, cursing, waving his arms around in the air, and behaving as a madman?

A. When I saw him he was just standing there.

Q. When he came up and hit you on the chin, didn't he impress you at that time and place as acting like a madman?

A. I would say he acted kind of mean and vicious.

Q. Isn't it a fact that he acted like an animal who has suddenly been released from captivity after three or four years and turned loose?

A. I wouldn't be prepared—I never saw an animal that was just released from captivity.

Q. You do not call them animals over there in D Block?

A. Who?

Q. You do not call any of those fellows who are locked up in D Block for some period of time animals, would you?

A. I wouldn't call them animals." (T. 906-908.)

There was ample evidence to sustain the finding of the Jury that Shockley was sane. The only evidence to the contrary consisted of statements by fellow inmates, which evidently the Jury did not believe.

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**(b) ADDRESSED TO THE POINTS RAISED BY APPELLANT  
MIRAN EDGAR THOMPSON.**

(1) Counsel for defendant Thompson have objected to a portion of the instructions given by the Court bearing upon the credibility of the various witnesses who testified, and have quoted in the brief only a portion of the charge of the Court upon that subject.

An examination of the entire instruction will disclose that it is not objectionable in any way. (T. 2131-2132.)

The record further discloses that Thompson did not make any objection to this portion of the charge before the jury retired to consider its verdict. Rule 30 of the Rules of Criminal Procedure provides:

"No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matters to which he objects and the grounds of his objection."



(2) The charge of the Court as to the testimony of the defendant is not objectionable. It states the law correctly. (T. 2134.)

Furthermore, counsel did not object to this portion of the charge before the jury retired as required by Rule 30 of the Rules of Criminal Procedure.

(3) The instruction of the Court as to the rejection of the testimony of any witness demonstrated to have testified falsely is a correct statement of the law. (T. 2131-2132.)

Furthermore, counsel did not object to this portion of the charge before the jury retired as required by Rule 30 of the Rules of Criminal Procedure.

(4) Counsel objected to this instruction given by the Court:

“You may also consider in that connection the criminal record of any defendant. You may not disregard the testimony of a witness because he is a convicted felon, but you may consider in determining whether you wish to believe all or any part of his testimony his criminal record.” (T. 2132.)

This objection was made before the jury retired to deliberate upon the verdict.

The use of the term “criminal record” by the Court could not have prejudiced the defendant because the only criminal record that was in evidence consisted of convictions of felonies by the defendant. There was no other criminal record that the jury could consider. The Government was not limited to showing only one conviction of a felony by a defendant. It is permitted

to show that the defendant had been convicted of other felonies, bearing upon his credibility.

“The defendant had voluntarily offered himself as a witness in his own behalf, and evidence that he had been convicted of other crimes was clearly admissible as bearing upon his credibility.”

*MacKnight v. United States* (1st Cir.), 263 F. 840;

*Edwards v. United States*, 18 Fed. (2d) 402.

(5) Counsel claims that the verdict is void because it is not a complete verdict. He says that the jury was not asked if they had returned the verdict after the verdict was recorded and that, therefore, the jury was discharged without rendering a complete verdict.

The action taken by the Court upon the return of the verdict conformed to Rule 31 of the Rules of Criminal Procedure. Subdivision (d) of Rule 31 provides:

“When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court’s own motion.”

The Rules of Criminal Procedure require the Judge to poll the jury before the verdict is recorded. The sections of the Penal Code of California cited by counsel have no application.

(6) There is no uncertainty in the charge of murder contained in the indictment.

While Guard Miller died on May 3, 1946, the act that caused his death was committed on May 2, 1946.

(7) Counsel claim that the verdict fails to fix the punishment.

Section 454, Title 18 of the U. S. Criminal Code Annotated, provides:

“Every person guilty of murder in the first degree, shall suffer death.”

Section 567, Title 18, U.S.C.A. provides:

“In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto ‘without capital punishment’; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.”

The Court fully instructed the jury that they could qualify a verdict of guilty of first degree murder by providing that it should be without capital punishment. He used the following language:

“There is also a statute which is involved in this case which provides that in all cases where an accused is found guilty of the crime of murder in the first degree by the jury may qualify their verdict by adding thereto the words ‘without capital punishment,’ by the provisions of this law. An authority and power is granted to the jury in a case where a verdict of first degree murder is found. That power or authority to the jury is to decide in the event the accused is found guilty of the crime of murder in the first degree, that he shall not be executed, but shall be punished for life. The Congress of the United States, in passing that statute, has determined that it was proper

to leave to the sound discretion of the jury what weight shall be given to considerations such as age or sex or ignorance or human passion or weakness or the irrevocableness of the death penalty." (T. 2140-2141.)

Furthermore, in submitting forms of verdict to the jury, the Court submitted one in the following language:

"We the Jury find the defendant," naming him, "guilty of murder in the first degree without capital punishment." (T. 2145.)

(8) The Court did not erroneously permit the United States Attorney too wide a latitude in his cross-examination of defendant Thompson.

On direct examination defendant Thompson testified that he was in his cell on the afternoon of May 2, 1946, because he got a "lay-in" from the hospital. (T. 1813.) It was the contention of the Government, supported by the testimony of witnesses H. F. Herbert and Glen M. Pehrson (T. 234-257) that Thompson had knowledge in advance that an attempt to escape was to be made on the afternoon of May 2, 1946; that he was employed in the tailor shop, which is in the industrial area of the United States Penitentiary at Alcatraz; that on Tuesday, April 30, 1946, Thompson spoke to the witness Herbert, who was in charge of the tailor shop, about getting a lay-in on Thursday afternoon, May 2nd, 1946, and asked Herbert if he could get a "lay-in" for that afternoon. Thompson repeated this conversation with Herbert on Tuesday, and Wednesday, also, of the same week. It was proper on

cross-examination for the Government to show that Thompson got the "lay-in" Thursday afternoon, May 2, 1946, not because he was sick, but because he wished to be in the cell house when the attempted break was to be made. (T. 1852.)

Defendant Thompson further testified that he found a note in his cell at dinner time on May 2, 1946, from Coy, in which Coy stated he was going to escape and told Thompson if he wanted to go he would let him out of his cell and nobody would get hurt. (T. 1830-1831.)

It was proper for the Government on cross-examination to ask Thompson if he did not have a conversation with Coy on the preceding day, May 1, 1946, in which Coy told him, "Buddy, we are going home tomorrow. Do you want to go along?" (T. 1863-1864.)

Thompson denied any such conversation and, therefore, was not prejudiced by the question, although it was a perfectly proper question on cross-examination.

(9) Thompson, on direct examination, testified that he did not in any manner, shape or form abet or urge in the killing of Mr. Miller, saying: "No, I didn't. I have never helped kill anyone." (T. 1839.)

He also testified on cross-examination to the effect that he had been brought back to Texas and tried on a murder charge down there. It was proper for the Government to show he had been previously convicted of the crime of murder in the State of Texas and had been convicted of other felonies. (T. 1856-1860.)

*MacKnight v. United States*, supra;

*Edwards v. United States*, supra.



Thompson, on direct examination, testified as to what he claimed had happened in the main cell house on the afternoon of May 2, 1946. It was proper for the Government on cross-examination to examine him in detail as to what happened in the cell house. He testified that he saw Captain Weinhold come over to the end of D Block. He then testified:

“Q. Who was with him when he came over there?

A. Well, when Hubbard was back there with a rifle, I was alongside.

Q. What did you have?

A. A club.

Q. Where did you get that club?

A. I think Hubbard handed it to me.” (T. 1867.)

It was also proper on cross-examination to ask the witness if he had seen Sam Shockley strike Sundstrum as Sundstrum was being put in the cell. (T. 1876.) It was also proper for the Court to refuse to permit the defendant Thompson to go into the facts of the murder case prosecuted against him in Texas, and also to preclude him from testifying as to the reason why he attempted to escape.

(10) The statements of the Court concerning the applications for writs of habeas corpus *ad testificandum* were proper. The Court had the right to require an assurance from counsel as to the materiality of the testimony sought from the persons whose production was requested by the writ.

(11) There was no error committed in the admission of the commitment issued by the United States

District Court for the Northern District of Texas, Amarillo Division, dated May 29, 1945. (T. 358-360.) It was proper to show that at the time of the break Thompson was an inmate of the Alcatraz Penitentiary held under a commitment from a United States District Court. The validity of the commitment was not before the Court. If the prisoner was held under color of law, he could be guilty of escape.

“The statute, 18 U.S.C.A. Section 753 (h), forbids escape, not only to those ‘properly in the custody of the Attorney General’ but also to all ‘who are confined in any penal or correctional institution, pursuant to his direction,’ without mention of the propriety of the confinement. We are of opinion that attempts at escape from such institutions are \* \* \* forbidden to all inmates, and that, if they consider their confinement improper, they are bound to take other means to test the question.”

*Bayless v. United States* (9th Cir.) 141 Fed. (2d) 578 (p. 580).

(12) There was no misconduct on the part of the United States Attorney concerning the demands of counsel for Defendant Thompson for an alleged statement taken by the Federal Bureau of Investigation from him. When demand was made by the prosecution, the United States Attorney said:

“Mr. Hennessy. I haven’t any statement.” (T. 1781.)

When counsel again asked for the privilege of inspecting the alleged statement, the United States Attorney said:

“Mr. Hennessy. I will say I haven’t got the confession.

Mr. Spagnoli. There is no confession, your Honor. We assign that as gross misconduct on the part of the District Attorney and prejudicial to the defendant Thompson.

Mr. Hennessy. Well, the statement.

Mr. Spagnoli. He has never made a confession. A confession imputes that he murdered or killed Guard Miller, which Mr. Hennessy knows he never confessed; he had nothing to confess.

Mr. Hennessy. Well, call it a statement.

Mr. Spagnoli. That is prejudicial to the defendant Thompson.

Mr. Hennessy. Call it a statement if you want, but I haven’t got the statement. Is that plain enough for you?” (T. 1780-1781.)

Inasmuch as the United States Attorney stated he had no such document, it matters little whether it is called a confession or a statement. Finally both of the parties agreed on calling it a statement. There was no prejudice to the defendant.

(13) The testimony relative to the homicide of Harold Stites was properly admitted.

Stites was killed on the evening of May 2, 1946 while in the west gun gallery. This evidence was admissible as part of the *res gestae*. It was an occurrence during the attempted escape.

The term “*res gestae*” may be defined as those circumstances which are the undesigned incidents of a

particular litigated act and which are admissible when illustrative of such acts.

*Ft. Smith Oil Co. v. Glover*, 24 S. W. 106, 58 Ark. 168;

*First Nat'l Bank v. Home Ins. Co.*, 274 Pa. 129.

The test of the admissibility of evidence as a part of the *res gestae* is whether the Act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event, which it characterizes, as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.

32 C.J.S. 403;

*Molloy v. Chicago Rapid Transit Co.*, 166 N. E. 530, 335 Ill. 164;

*Carter v. C. F. Smith Co.*, 281 N. W. 380, 285 Mich. 621.

The main transaction is not necessarily confined to a particular point of time, but may extend over a longer or shorter period, according to the nature and character of the transaction.

32 C.J.S. 408;

*Yarbrough v. Prudential Ins. Co.* (CCA-Ga.) 99 Fed. (2d) 874.

The circumstances attendant on the main or principal fact may be shown.

*Louisville & Northern Railway Co. v. Hamby*, 93 So. 698, 208 Ala. 75.

The admissibility of evidence as part of *res gestae* is a matter resting largely in the discretion of the trial Court.

*Fort St. Union Depot v. Hillen* (CCA-Mich.)  
119 Fed. (2d) 307.

(14) There was no error in the refusal of the Court to permit counsel to examine the statement made by Guard Corwin to the Federal Bureau of Investigation. (T. 605.)

The records sought by counsel constituted official records of the Division of Investigation of the United States Department of Justice. Such documents are confidential in character, are in the custody of the Attorney General, and may not be released by subordinate members of the Department of Justice.

Title 5 U.S.C.A. Sec. 22;

Section 65, Rules and Regulations of the Division of Investigation, United States Department of Justice;

*Ex parte Sackett* (9th Cir.) 74 F. (2d) 922.

In a note to the last-mentioned case, Section 65 of the Rules and Regulations of the Division of Investigation of the United States Department of Justice is set forth.

Rule 16 of the Federal Rules of Criminal Procedure, providing for the discovery and inspection of documents, does not apply to the Federal Bureau of Investigation reports.

*United States v. Black*, 6 F.R.D. 270 (N. D. Ind.).



See, also,

*United States v. Abraham Meller*, C124-167  
(S.D.N.Y.).

(15) There was no error in admitting the handwriting on the wall of Cell 403 made thereon by Guard Lageson.

While Guard Lageson was in Cell No. 403 on the night of May 2, 1946, after the shooting of the guards, and before the guards were rescued, he wrote the names of six men on the wall of the cell. The names written were Cretzer, Coy, Carnes, Shockley, Hubbard and Thompson. While the writing of these names on the wall was undoubtedly a part of the *res gestae*, and admissible as such, counsel for the Government did not bring out the fact of the writing of these names during the direct examination of Guard Lageson. However, during the cross-examination of Guard Lageson, he was asked the following question by Mr. Zamloch, the attorney for defendant Carnes:

“Q. Of course it is. In other words, there was a great deal of excitement. You were all under stress. You naturally could not make any notes at the time, and you had to rely on your reconstruction the next day as best you could remember; isn't that about it?

A. Yes, true.” (T. 674-675.)

On redirect examination, the United States Attorney questioned the witness as follows:

“Mr. Hennessy. Q. Mr. Zamloch, in his examination of you, asked if you had made any notes while this thing was occurring.

A. I made no notes.

Mr. Zamloch. I didn't ask that question.

The Court. No.

Mr. Hennessy. He said, 'Of course, you made no notes and you are depending only on your recollection of what happened.'

The Court. I think what he said was, 'Of course, you didn't make any notes while this was going on.'

Mr. Zamloch. That is correct.

Mr. Hennessy. I want to ask him if he did make any notes.

Mr. Zamloch. He answered.

The Witness. I made no notes on paper, no.

Mr. Hennessy. Q. Did you make any notes at all?

A. I wrote the names of six men on the wall of the cell.

Q. In what cell.

A. No. 403.

Q. When did you write the names of the six men on the wall of the cell?

A. That was after the shooting.

Q. About how long after?

A. I wouldn't be able to say; sometime during the night.

Q. Before you were rescued?

A. Yes.

Q. I show you this photograph and ask if the handwriting on the wall of the same is your handwriting, if it is a correct photograph?

A. Yes, sir, it is my handwriting.

Q. That is your handwriting?

A. Yes.

Q. What names did you write on the wall of the cell at that time?

A. I wrote the names of six men.

Q. What?

A. Cretzer—

Mr. Spagnoli. We object on the ground it is not the best evidence, and it is entirely immaterial, irrelevant and incompetent, and self-serving, and it is not proper redirect examination.

Mr. Sullivan. I join in the objection and further it is so far remote in point of time it is not part of the *res gestae*. I think by this witness' own statement, he wrote it many hours later, it is so much hearsay. It violates the very basis and theory of—

Mr. Hennessy. Counsel asked him whether he made any notes at that time.

The Court. I will overrule the objection.

Mr. Hennessy. Q. What six men?

Mr. Spagnoli. We object on the same grounds. It is an attempt to bolster up his own testimony.

The Court. Well, you just objected to it and I overruled it.

Mr. Spagnoli. You are asking him for the names?

The Court. That is the question you objected to and I ruled on it.

The Witness. A. Cretzer, Coy, Carnes, Shockley, Hubbard, Thompson.

Mr. Hennessy. Q. This is a correct photograph of that writing on the wall you made at that time?

A. Yes.

Mr. Hennessy. I offer this in evidence and ask it be marked Government's next in order, and that the jury be permitted to see it.

Mr. Spagnoli. We object to the offer on the ground the proper foundation has not been laid for it. It is not the best evidence and it is entirely hearsay.

The Court. Do you wish to make the same objection?

Mr. Sullivan. I make the objection it is incompetent, irrelevant and immaterial, beyond the scope of the *res gestae*; it is hearsay and no foundation laid.

Mr. Zamloch. Mr. Hennessy has assumed something which is incorrect, your Honor. He assumed the door was opened on the questioning of this witness—

Mr. Hennessy. You did.

Mr. Zamloch. I did not question him on notes. I merely questioned him as to the reconstruction of the events. What I asked was, whether he had any notes, referring, of course, your Honor to notes as to answers that he gave.

Mr. Hennessy. Well, he did make notes.

Mr. Zamloch. What you are doing is to bolster up his testimony.

The Court. Well, you are arguing the weight of the evidence. I will overrule the objection.

(The photograph was marked U. S. Exhibit 25 in evidence.)

Mr. Spagnoli. I ask it not be considered against Thompson. I don't believe we asked him about any notes on cross-examination. If this was brought out by other counsel in the case we have no opportunity

even to object to their questions, we could not ask him to withdraw it; if one of the associate counsel for Thompson had put the question, Mr. Vinkler or myself, he could have withdrawn my question and I could have withdrawn his, but we are placed in a peculiar position.

The Court. The evidence that is already in is sufficient to justify the admission. I have overruled the objection." (T. 681-684.)

The evidence was properly admitted because of the question asked the witness Lageson on his cross-examination by Mr. Zamloch, and it was further admissible because it constituted an occurrence in the course of the conspiracy and was a part of the *res gestae*. (See authorities heretofore cited in Paragraph 13.)

(16) There was no misconduct on the part of the United States Attorney in his cross-examination of Defendant Thompson's witness W. L. Baker.

On direct examination of witness W. L. Baker, called by counsel for defendant Thompson, he was asked the following questions by Mr. Spagnoli:

"Q. What are you charged with over at Alcatraz, if you don't mind, tell us.

A. Kidnapping.

Q. Technical kidnapping?

Mr. Hennessy. I object to that on the ground there is no such offense.

Mr. Spagnoli. Driving a car across a state line?

Mr. Hennessy. If you don't want to bring out the facts, I will bring them out.



Mr. Spagnoli. We may prove him innocent here. We had one innocent man this morning, Mr. Peabody.

Mr. Hennessy. Your clients are always innocent, I presume.

Mr. Spagnoli. Q. How much of a sentence did they give you?

A. Life." (T. 1661.)

On cross-examination the witness was asked:

"Q. What felonies were you convicted of besides kidnapping?

A. Murder and manslaughter.

Q. Who did you murder?

A. My father." (T. 1675-1676.)

There was no impropriety in asking these questions. The subject of the conviction had been brought out by his own counsel on his direct examination, and it was proper to identify the particular felonies of which he had been convicted. No objection was made to the question when it was asked the witness.

(17) There was no error in disallowing the question by defendant's counsel of witness W. L. Baker, an inmate of Alcatraz, as to whether he felt he was jeopardizing his position as prison librarian by testifying.

The question was manifestly improper and a self-serving statement by counsel. (T. 1677.)

(18) The trial Court had jurisdiction of the offense.

The trial Court had jurisdiction in this case for two reasons: *First*, the defendant was charged with killing

a Federal officer in violation of Section 253, Title 18 U.S.C.A., and *second*, the killing took place in the Alcatraz Penitentiary, a place reserved exclusively for the use of the United States and under the exclusive jurisdiction thereof, and within this Division and District.

The introduction in evidence of Executive Order of President Fillmore, dated November 6, 1850, reserving Alcatraz to the United States, and the introduction in evidence of a certified copy of the map of Alcatraz Island, recorded in the Office of the Recorder of the City and County of San Francisco on June 23, 1913, together with the testimony of Warden Johnston as to the use of Alcatraz Island as a United States prison, constituted the necessary jurisdictional proof.

In 1897 the State of California passed the following statute:

“Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this state now held, occupied, or reserved by the government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purpose: Provided, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; and provided further, that this state reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this state against any person or persons charged with crimes committed without said lands.

“Section 2. This Act shall take effect immediately.”

*Stats. Cal. 1897*, p. 51.

It was in pursuance of this statute that the map was recorded in the Office of the Recorder of the City and County of San Francisco on June 23, 1913.

By Public Law No. 494, S. 2531, 75th Congress, 3rd Session, Chapter 176, 52 Stat. 247, Congress transferred Alcatraz Island to the United States Department of Justice.

See, also,

*United States v. Watkins*, 22 Fed. (2d) 438.

(19) The verdict as to defendant Thompson is sustained by the evidence.

The evidence shows that defendant Thompson, who was celled in C Block in the main cell house, had been employed in the tailor shop of the Alcatraz Penitentiary for some time prior to May 2, 1946, and that on Monday, April 29, 1946, he approached the foreman of the tailor shop, Mr. Herbert, and requested that he be given a lay-in for the afternoon of May 2, 1946. He repeated this request again on Tuesday and Wednesday, April 30th and May 1st, 1946. (Tr. 236-237.) At noon of May 2, 1946, he visited the hospital and procured a pass permitting him to remain in his cell on that afternoon.

After Guard Miller had been overcome and his keys taken from him by inmates Coy and Hubbard, Cretzer, Thompson and Carnes were released from their cells in the main cell house. Thompson immediately joined

the other inmates in their effort to escape from the penitentiary. When Burdett entered the main cell house from the dining room, the first man he noticed was Thompson, who was standing near a desk on the west end of the cell house with a wrench in his hand. (T. 711.)

Thompson accompanied Cretzer and Shockley when Captain Weinhold was placed in a cell. (T. 718-719.) When Guards Simpson and Baker entered the main cell house, they were seized by Thompson and other inmates. Thompson had a rifle. Cretzer had a .45 automatic pistol and Shockley had a wrench or club. (T. 834-838.) Thompson pointed the rifle at them, and with Cretzer herded them into the third cell of C Block. (837-840.) When Sundstrum, in the main cell house, walked down Broadway toward the west end of the cell house, Thompson stepped out and pointed the rifle at him. (T. 877-878.) Cretzer, Coy and Thompson took Sundstrum and placed him in the third cell of C Block. (T. 882-883.)

Thompson was present when the conversation took place between the inmates and the guards relating to the keys. (T. 733.) He went to the door leading to the courtyard with the other inmates when they endeavored to open door 107. (T. 722.) He was outside cell 403 when Cretzer engaged Captain Weinhold in conversation (T. 724), and, according to the testimony of witness Burdett, Shockley said: "We are going to kill all of you, kill all the sons of bitches."

Thompson spoke up and said: "Yes, we want no living witnesses." (T. 725.) According to the testi-

mony of Guard Lageson, Shockley said: "We will kill every son-of-a-bitch of them," and Thompson said: "We don't want any living witnesses. Kill them all." (T. 628.)

Thompson claimed that he had withdrawn from the conspiracy and returned to his cell after the sounding of the siren and before the shooting. He offered the testimony of certain inmates to substantiate his claim. Their testimony was contradicted by the testimony of Guards Burdett and Lageson, showing that he was actually present alongside of Cretzer and urging Cretzer to kill the guards. Furthermore, the testimony of Captain Weinhold shows that he was outside the cells in the corridor of C Block sometime after the shooting and was armed with a rifle.

The jury evidently did not believe the testimony of Thompson and his witnesses, but rather accepted as true the statements of the guards.

The defendants in this case received a fair and impartial trial, and the verdict of the jury was fully supported by the evidence.

Dated, San Francisco, California,  
November 14, 1947.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

DANIEL C. DEASY,

Assistant United States Attorney,

*Attorneys for Appellee.*